

BEN LO 30B6
ANYWHERE COMMERCE V INGENICO

December 10, 2021

1-4

Page 1			Page 3		
1 UNITED STATES DISTRICT COURT			1 I N D E X		
2 DISTRICT OF MASSACHUSETTS			2		
3			3 INDEX OF EXAMINATIONS:		
4 ANYWHERE COMMERCE, INC. and)			4 EXAMINATION		
5 BBPOS LIMITED,)			5 By Mr. Techentin		
6 Plaintiffs,)			6 Reporter certification		
7 v.) CIVIL ACTION NO.:			7		
8 INGENICO INC., INGENICO CORP.) 1:19-cv-11457-IT			8 EXHIBITS:		
9 and INGENICO GROUPS, SA,)			9 NUMBER DESCRIPTION		
10 Defendants.)			10 Exhibit 54 Notice of 30(b)(6) Deposition of Plaintiff BBPOS Limited		
11 _____)			11 Exhibit 55 BBPOS Response to Rule 30(b)(6)		
12			12 Deposition Notice		
13			13 Exhibit 56 BBPOS Updated Response to Rule 30(b)(6) Deposition Notice		
14			14 Exhibit 57 Email dated December 8, 2021		
15			15 Exhibit 58 Statement dated February 1, 2013		
16			16 Exhibit 59 License Agreement dated the 23rd day of March, 2010		
17			17 Exhibit 60 Amendment to License Agreement		
18			18 Exhibit 61 Document entitled "BBPOS Information Package		
19			19 Confidential"		
20			20 Exhibit 62 Document entitled " "MPOS Everywhere."		
21			21 Exhibit 63 BBPOS Chipper 2X specification material		
22			22 Exhibit 64 BBPOS Chipper 2X BT specification material		
23			23 MR. TECHENTIN:		
24			24		
25					
Page 2			Page 4		
1 APPEARANCES:			1 Exhibit 65 Chipper Mini 2 specification material		
2			2 Exhibit 66 Chipper OTA material		
3 ADLER POLLOCK & SHEEHAN, P.C.			3 Exhibit 67 Walker 1.0 specification material		
4 Once Citizens Plaza, 8th Floor			4 Exhibit 68 Rambler 3.0 specification sheet		
5 Providence, RI 02903-1345			5 Exhibit 69 Email dated June 11, 2012		
6 Ph: 401-274-1345			6 Exhibit 70 Document entitled "Cartes 2013 Paris MPOS solutions review"		
7 Jtechentin@apslaw.com			7 Exhibit 71 authored by Nabeel Choudhry.		
8 BY: Jeffrey K. Techentin,			8 Exhibit 72 Cardreader promotional material generated by Landi		
9 On behalf of the Defendants;			9		
10			10 Exhibit 73 Product review for RP350x Mobile Card Reader		
11 Kutak Rock			11 Exhibit 74 Email dated February 12, 2013		
12 1760 Market Street, Suite 1100			12 Exhibit 75 Email dated May 7, 2013		
13 Philadelphia, PA 19104-4104			13 Exhibit 76 Email dated November 11, 2012		
14 Ph: 215-353-8484			14 Exhibit 77 Email dated August 27, 2013		
15 Melissa.bozeman@kutakrock.com			15 Exhibit 78 Press release, ROAM RP350x Technical drawings		
16 BY: Melissa Bozeman,			16 Exhibit 79 Email dated July 18, 2012		
17 On behalf of the Plaintiffs;			17 Exhibit 80 Email dated July 16, 2012		
18			18 Exhibit 81 Email dated July 17, 2012		
19 ALSO PRESENT: Mike Cooper, Videographer			19 Exhibit 82 Email dated February 28, 2012		
20			20 Exhibit 83 Email dated May 23, 2012		
21			21 Exhibit 84 Email dated September 30, 2015		
22			22 Exhibit 85 Email		
23			23 Exhibit 86 Email dated December 11, 2015		
24			24		
25			25		

BEN LO 30B6
ANYWHERE COMMERCE V INGENICODecember 10, 2021
53-56

Page 53	Page 55
1 Q. And has BBPOS used for ROAM Data's benefit	1 the partner related to or in support of any object code of
2 BBPOS's best efforts to perfect and protect all	2 the software." Do you see that?
3 intellectual property rights in the products, devices,	3 A. Yes.
4 deliverables and services?	4 Q. And it is clarified "as used in this section,
5 MS. BOZEMAN: Objection. But you can answer.	5 'software' means the mobile applications by the partner on
6 A. Yes.	6 behalf of the company." Right?
7 BY MR. TECHENTIN:	7 A. Yes.
8 Q. Paragraph 3.12. So now we're on page 4 of this	8 Q. We go to the next page. There's a section headed
9 document. Says that the partner, BBPOS:	9 3.18. Do you see that?
10 --agrees that the company, ROAM Data, is and	10 A. Yes.
11 shall be the sole and exclusive owner of all	11 Q. And in that BBPOS agreed:
12 right, title and interest, including all	12 To indemnify and hold the company harmless from
13 intellectual property rights, in and to all	13 any and all losses, costs, liabilities or
14 deliverables (other than the products)." Is	14 expenses, including court costs and reasonable
15 that right?	15 fees of attorneys and other professionals
16 A. Yes.	16 arising out of or resulting from the breach of
17 Q. And that "all deliverables, (other than	17 any warranty, representation or other provision
18 products,) are deemed 'works for hire' for the company."	18 of this agreement by the partner --" that is a
19 Do you understand that?	19 breach by BBPOS "-- or arising out of or
20 A. Yes.	20 resulting from any claim brought by a third
21 Q. What does it mean that the deliverables would be	21 party against the company as a result of or
22 works for hire?	22 relating to any actual or alleged breach
23 A. That in this agreement ROAM Data also pay our	23 thereof."
24 engineer to be -- work of some application for them. And	24 Do you see that?
25 this application are the deliverables. That is work for	25 A. Yes.
Page 54	Page 56
1 hire.	1 Q. BBPOS agreed to indemnify and hold harmless ROAM
2 Q. What does it mean that it would be work for hire?	2 Data for any claims that arose out of its selling of
3 A. Work for hire. That means that they give the	3 products that were sourced from BBPOS; right?
4 instruction to us to deliver -- that gives the	4 MS. BOZEMAN: Objection. But you can answer.
5 specification of the products and the -- this is my	5 A. Yes.
6 understanding.	6 BY MR. TECHENTIN:
7 Q. And because it's a work for hire, ROAM Data would	7 Q. Has ROAM Data or its successor Ingenico made a
8 own that product, the deliverable, whatever it is, as	8 demand of BBPOS under this provision of the agreement?
9 opposed to BBPOS; right?	9 MS. BOZEMAN: Objection. You can answer.
10 MS. BOZEMAN: Objection. But you can answer.	10 A. Yes.
11 A. Yeah. Of the deliverable. The deliverable is a	11 BY MR. TECHENTIN:
12 software.	12 Q. How many times?
13 BY MR. TECHENTIN:	13 A. One.
14 Q. And it is owned by ROAM Data because it was a	14 Q. And did BBPOS indemnify Ingenico?
15 work for hire done by BBPOS; right?	15 A. We asked Ingenico to provide further information
16 A. Yes.	16 and they didn't provide.
17 Q. And it continues that BBPOS "agrees that the	17 Q. I'll ask the question again. Did BBPOS indemnify
18 company is the sole and exclusive owner of all rights in	18 Ingenico?
19 and to the software --" as that is defined "-- that no	19 A. No.
20 proprietary rights including but not limited to copyrights	20 Q. Did BBPOS hold Ingenico harmless?
21 and patents in the software are being retained by or	21 A. I don't know how to answer this question. Hold
22 transferred to the partner --" BBPOS "-- and that the	22 harmless. So can you repeat your questions.
23 company is the exclusive owner of all right, title and	23 Q. The question is: Did you hold Ingenico harmless?
24 interest, including all intellectual property rights, in	24 A. Does Ingenico has any harmless?
25 and to any and all source code developed solely by or for	25 Q. Paragraph 5 of the agreement that we're looking

BEN LO 30B6
ANYWHERE COMMERCE V INGENICODecember 10, 2021
57-60

<p style="text-align: right;">Page 57</p> <p>1 at is entitled "Term and Termination." Do you see that?</p> <p>2 A. Which page? Page 5? Yes.</p> <p>3 Q. 5.1 says that:</p> <p>4 This agreement shall become effective upon</p> <p>5 execution and shall continue in full force</p> <p>6 unless or until terminated by, (a), the written</p> <p>7 consent of the parties or, (b), by either party</p> <p>8 pursuant to section 5.3 below."</p> <p>9 Right?</p> <p>10 A. Yes.</p> <p>11 Q. So this contract was perpetual until somebody</p> <p>12 terminated it; right?</p> <p>13 A. Well, I don't know.</p> <p>14 Q. It didn't have an end date; right?</p> <p>15 A. No.</p> <p>16 Q. And I think you testified a little while ago that</p> <p>17 nobody has terminated this license agreement; correct?</p> <p>18 A. Correct.</p> <p>19 Q. So it remains in effect?</p> <p>20 A. Well, this is too legal. So I leave that to</p> <p>21 lawyers.</p> <p>22 Q. All right. Well, you haven't -- you haven't</p> <p>23 entered into a written consent with Ingenico to terminate</p> <p>24 this agreement; right?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 59</p> <p>1 services and specifications for this contract, and some of</p> <p>2 those terms we've already used here today. One of them is</p> <p>3 "the products." Under "the products" it says:</p> <p>4 Encrypted Circle Swipe reader, sometimes</p> <p>5 referred to as the "Crypto Swipe" or "ROAMpay</p> <p>6 Swipe" that has the ability to generate the</p> <p>7 capacitance for encryption from the audio jack</p> <p>8 of a mobile device or PC. This was developed by</p> <p>9 the partner -- meaning BBPOS -- and including</p> <p>10 any variants of this design."</p> <p>11 Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. And you've made reference to the "Circle Swipe"</p> <p>14 earlier today. The "Circle Swipe" is a -- that's a BBPOS</p> <p>15 term; is that right?</p> <p>16 A. Yes.</p> <p>17 Q. And if I understand it correctly, the reason it's</p> <p>18 called "Circle Swipe" is that the version of that that was</p> <p>19 sold to ROAM Data had a half-moon shape on its product</p> <p>20 configuration?</p> <p>21 A. Yes.</p> <p>22 Q. Where was this document referred to as "Crypto</p> <p>23 Swipe"?</p> <p>24 A. Crypto Swipe means the device is a Circle Swipe,</p> <p>25 and also send the encrypted data. So they call it crypto.</p>
<p style="text-align: right;">Page 58</p> <p>1 Q. That's correct? You have not?</p> <p>2 A. I had not.</p> <p>3 Q. And you understand that because Ingenico acquired</p> <p>4 that 100 percent ownership interest in ROAM Data that you</p> <p>5 mentioned a while ago this contract is now effectively</p> <p>6 between BBPOS and Ingenico; right?</p> <p>7 MS. BOZEMAN: Objection. But you can answer.</p> <p>8 A. Yes.</p> <p>9 BY MR. TECHENTIN:</p> <p>10 Q. In fact, BBPOS has asserted a claim of breach of</p> <p>11 contract against Ingenico for breaching this contract; is</p> <p>12 that right?</p> <p>13 A. Yes.</p> <p>14 Q. So BBPOS concedes that Ingenico is a party to</p> <p>15 this license agreement; right?</p> <p>16 MS. BOZEMAN: Objection. But you can answer.</p> <p>17 A. Yes. Ingenico company, so yes.</p> <p>18 BY MR. TECHENTIN:</p> <p>19 Q. And then if we just go down to page 9, we can see</p> <p>20 that you signed this; right?</p> <p>21 A. Yes.</p> <p>22 Q. And Will Graylin signed it on behalf of ROAM</p> <p>23 Data?</p> <p>24 A. Yes.</p> <p>25 Q. Schedule 1 sets forth the products, devices,</p>	<p style="text-align: right;">Page 60</p> <p>1 Also call it crypto. Data and crypto, so Crypto Swipe.</p> <p>2 Q. Who called it Crypto Swipe?</p> <p>3 A. Who called it Crypto Swipe? I don't remember.</p> <p>4 Q. Who called it ROAMpay Swipe?</p> <p>5 A. I don't remember. I think it's ROAM. I think</p> <p>6 Crypto Swipe or ROAMpay Swipe is also called by ROAM Data.</p> <p>7 Q. And separate from the bullet point for the Circle</p> <p>8 Swipe reader and variants on that design, there's a second</p> <p>9 bullet; right?</p> <p>10 A. Yes.</p> <p>11 Q. And that says "EMV-capable POS unit with</p> <p>12 Bluetooth interface." Right?</p> <p>13 A. Yes.</p> <p>14 Q. So one of the products that's exclusive to ROAM</p> <p>15 Data is an EMV-capable point of sale unit with Bluetooth</p> <p>16 interface; right?</p> <p>17 MS. BOZEMAN: Objection. But you can answer.</p> <p>18 A. This product has never been finished. This</p> <p>19 product inside the agreement is completing the</p> <p>20 certification, but eventually the certification has not</p> <p>21 been finished. So I can say that the order never exists.</p> <p>22 BY MR. TECHENTIN:</p> <p>23 Q. Let me understand your testimony correctly.</p> <p>24 You're saying that BBPOS never produced an EMV-capable</p> <p>25 point of sale device with Bluetooth connectivity?</p>

BEN LO 30B6
ANYWHERE COMMERCE V INGENICODecember 10, 2021
61-64

<p style="text-align: right;">Page 61</p> <p>1 A. You're talking about this specific product? This 2 product is it never complete certification or casino use 3 purpose.</p> <p>4 BY MR. TECHENTIN:</p> <p>5 Q. Could you repeat that, please.</p> <p>6 A. I mean this is the product which is supposed to 7 be used by ROAM Data for casino project. So this product 8 has to complete the casino certifications. And after we 9 did the certifications the certification is not complete. 10 This product is not complete.</p> <p>11 BY MR. TECHENTIN:</p> <p>12 Q. At the time that this agreement was signed in May 13 of 2010, did BBPOS have any EMV-capable POS product?</p> <p>14 A. When you say EMV-capable, then from engineer 15 point of view normally we're referring to a terminal which 16 has passed EMV certification. So I would say that by then 17 BBPOS has no product which passed EMV certification. 18 Q. Had no products that passed?</p> <p>19 A. No product passed EMV-certifications. 20 Q. And then the next definition is for the solution. 21 That says: 22 Payment solution using the BBPOS or ROAMPay POS 23 as the customer facing hardware terminal and 24 transact via any ROAM Data payment gateway or 25 equivalent software backend for recurring</p>	<p style="text-align: right;">Page 63</p> <p>1 solution. You saying some products that ROAMPay POS. 2 POS. They call it ROAMPay POS. And this -- it also has a 3 ROAMPay gateway. So the whole solution is use the ROAMPay 4 POS or BBPOS communicates with the casino systems, and 5 they use ROAM Data payment gateway as the payment backend. 6 So this is the whole solution is also how the casino 7 project.</p> <p>8 Q. The next definition is "devices." Do you see 9 that?</p> <p>10 A. Yes.</p> <p>11 Q. And that says the:</p> <p>12 ROAMPay POS EMV terminal developed by the 13 contractor based on the foundation of BBPOS is 14 the device that will be owned by ROAM." Right?</p> <p>15 A. Yes. Yes.</p> <p>16 Q. What was the ROAMPay POS EMV terminal?</p> <p>17 A. It is also a very special terminal. Also for 18 casino purpose. So that's why ROAM own this project. The 19 interface with casino is quite different than interface 20 with other merchants. And the casino also have their very 21 specific requirement. So this is a very specific product 22 specifically for this solution. And then ROAM Data offer 23 the whole solution to a casino.</p> <p>24 Q. The next definition is the services and 25 specifications; right?</p>
<p style="text-align: right;">Page 62</p> <p>1 revenue and services." Right?</p> <p>2 A. Yes.</p> <p>3 Q. Is the solution a software item?</p> <p>4 A. No. Solution is solution. Solution consists of 5 like what we said. A middleware, a product and also a 6 gateway service. So all you get is a solution that 7 product offering.</p> <p>8 Q. So what is "middleware"?</p> <p>9 A. I think here is ROAMPay POS is the software. It 10 is the application that some of our engineer paid by ROAM 11 Data to perfect. By that time ROAM already has ROAMPay 12 POS. ROAMPay POS is one product, and we helping them to 13 perfect.</p> <p>14 Q. And the ROAMPay POS resides where?</p> <p>15 A. Can you repeat your questions?</p> <p>16 Q. Sure. So in these mPOS solutions we have a 17 Dongle; right?</p> <p>18 A. Yes.</p> <p>19 Q. And we have a Smartphone that the Dongle plugs 20 into; right?</p> <p>21 A. Yes.</p> <p>22 Q. And in the case of some of these the Dongle 23 connects to the Smartphone by the audio jack; right?</p> <p>24 A. You remind me something. So this solution is --</p> <p>25 I remember that this solution is the casino project</p>	<p style="text-align: right;">Page 64</p> <p>1 A. Yes.</p> <p>2 Q. And it says:</p> <p>3 The services shall include appropriate design 4 and manufacturing services to produce the Crypto 5 Swipe devices including, without limitation, key 6 injection and support with respect to software, 7 to port to ROAMplayers on a variety of devices."</p> <p>8 Right?</p> <p>9 A. Yes.</p> <p>10 Q. And under this agreement, those services that 11 BBPOS was providing, the result of those would be owned by 12 ROAM Data; right?</p> <p>13 A. Yes.</p> <p>14 Q. And ROAM Data would own all the IP associated 15 with those services; correct?</p> <p>16 A. Yes.</p> <p>17 Q. And then it goes on to say "the services shall 18 include software development services." Right?</p> <p>19 A. The service is basically we have ROAM Data to 20 perfect ROAMplayer and ROAMplayer is a product of ROAM 21 Data as far as I know. First time meet Will Graylin, he 22 told me that ROAM is product of ROAMplayer. But 23 ROAMplayer is not perfect. And then they want to use the 24 ROAMplayer for different projects casino and then they 25 know that with BBPOS which is not completed yet but it</p>

BEN LO 30B6
ANYWHERE COMMERCE V INGENICO

December 10, 2021
69-72

	Page 69	Page 71
1	A. Yes.	1 A. Yes.
2	Q. This is entitled "BBPOS Information Package	2 Q. So should we add EMV swipe to that list?
3	Confidential." Do you see that?	3 A. Yeah. Later on before Chipper. We give it
4	A. Yes.	4 better marketing name. EMV swipe is so difficult to
5	Q. Do you recognize this document?	5 pronounce. So all our marketing person later on call it
6	A. Yes.	6 Chipper.
7	Q. What is it?	7 Q. So this is the same product as Chipper?
8	A. This is the document that we prepare for the	8 A. Yes.
9	company to pitch to potential investor.	9 Q. Is there any difference between this product and
10	Q. Do you know when this was prepared?	10 the first generation of Chipper?
11	A. If I recall correctly, I think I prepare this	11 A. I think this is the first generation of Chipper,
12	document in 2012 or '13. That's around this timeframe.	12 if I remember correctly. This is the first generation of
13	Q. All right. Well, if you look at page 21 of the	13 Chipper.
14	document, you'll see that there's a slide that's entitled	14 Q. This product. So does this product process mag
15	"New Products in 2013"?	15 stripe?
16	A. Yes. Yes. '13. '12 or 13, yes.	16 A. Yes.
17	Q. The next page, page 22, says "new chip-based	17 Q. And it connects to the phone via an audio jack?
18	products 2013." What is a chip-based product?	18 A. Yes.
19	A. Chip based product is a product which can read	19 Q. Was 2013 the first time that there was ever a
20	the EMV card reader.	20 version of Chipper?
21	Q. I'm sorry. I didn't quite catch that. Say that	21 A. I think so, if this -- if this -- yeah. I think
22	again.	22 so. This is the first time that we really have an EMV
23	A. Chip means E, Europay; M, for MasterCard; V, for	23 product.
24	Visa card. So chip is EMV card. So this is the reader to	24 Q. Prior to the EMV swipe BBPOS had never had a
25	read EMV card. Is that clear?	25 product that could handle the Europay, MasterCard, Visa
	Page 70	Page 72
1	Q. Thank you.	1 standard; correct?
2	There are two products shown on this page. The	2 A. Let me make sure that I understand your question
3	EMV swipe and the WisePad. The EMV swipe product. Is	3 correctly. I mean the EMV swipe. If any product claim
4	that something that was actually sold by BBPOS?	4 they can do EMV transaction as to finish EMV
5	MS. BOZEMAN: Are you referring to page 21?	5 certifications. So we say that this is the first product
6	MR. TECHENTIN: No. I'm on 22.	6 which can officially process EMV transaction. This is a
7	A. Yes.	7 product with the EMV level 1 and level 2 certifications.
8	BY MR. TECHENTIN:	8 Q. That's true for both the EMV swipe and the
9	Q. Who did you sell the EMV swipe to?	9 WisePad; correct?
10	A. Well, we sell to many customers including ROAM	10 A. Yes, correct.
11	Data, AnywhereCommerce and some customers in Mexico and	11 Q. And both of those products were introduced in
12	maybe China.	12 2013; correct?
13	Q. Is that the same customer or customers in Mexico	13 A. Correct.
14	that you were referring to before?	14 Q. Prior to 2013, if I understand your answer just a
15	A. I don't remember. But -- I don't remember. But	15 moment ago, prior to 2013 BBPOS did not have any products
16	maybe same or different customers. I'm pretty sure that	16 that had been certified for EMV?
17	there are some customers in Mexico. Oh, I remember. It's	17 A. Correct.
18	pay clip. It's pay clip. Clip. Pay clip. Yes. The	18 Q. There's a annotation at the bottom by the EMV
19	customer is clip. Pay clip. P-a-y c-l-i-p.	19 swipe that says PCIS RED. Do you know what that stands
20	Q. Is this EMV swipe one of the products on which	20 for?
21	BBPOS pays a royalty to AnywhereCommerce?	21 A. Yes. That stands for payment card industry
22	A. Yes.	22 security read card reader -- secure read encrypted device.
23	Q. When I asked you before which products BBPOS is	23 Q. This was not PCI PTS certified; correct?
24	paying a royalty to AnywhereCommerce for, you only	24 A. Correct.
25	identified the Circle Swipe and the Chipper; right?	25 Q. The WisePad was, though?

BEN LO 30B6
ANYWHERE COMMERCE V INGENICODecember 10, 2021
89-92

<p style="text-align: right;">Page 89</p> <p>1 Exhibit 67 as having been manufactured by BBPOS; right?</p> <p>2 A. Yes.</p> <p>3 Q. And I'm sorry. Which BBPOS product does Walker</p> <p>4 1.0 correspond to?</p> <p>5 A. I think Chipper. Chipper.</p> <p>6 Q. Which Chipper?</p> <p>7 A. Just Chipper.</p> <p>8 Q. So we had -- just so I'm clear, we had EMV swipe</p> <p>9 which later became branded as Chipper; right?</p> <p>10 A. Yeah. EMV swipe. Yes.</p> <p>11 Q. So looking at Walker 1.0 and its specifications</p> <p>12 does that tell you which version of Chipper this would</p> <p>13 correspond to?</p> <p>14 A. I think first version, but I'm not sure.</p> <p>15 Q. When you manufacture the Chipper, rebranded as</p> <p>16 the Walker for AnywhereCommerce, do you have to pay a</p> <p>17 license fee to AnywhereCommerce?</p> <p>18 A. I just told them one price. So if -- I just told</p> <p>19 them one price.</p> <p>20 Q. How is the Walker 1.0 different from the Circle</p> <p>21 Swipe?</p> <p>22 A. Well, in many ways. From the function, the</p> <p>23 Walker 1.0 has EMV features, [indiscernible] the Circle</p> <p>24 Swipe, and this one you can say it is circle. From the</p> <p>25 [indiscernible] feature. The Circle Swipe has no battery</p>	<p style="text-align: right;">Page 91</p> <p>1 MS. BOZEMAN: Right. Okay.</p> <p>2 A. Because I said that the Chipper, we have one</p> <p>3 version for charging and then we have also a version</p> <p>4 for -- for connection. So I don't know. This one, the</p> <p>5 Chipper, but the Chipper is also configurable. So the</p> <p>6 first version for charging only. And then later on we</p> <p>7 have version to communicate via USB. So we still call it</p> <p>8 Chipper, but its configuration is a little bit different.</p> <p>9 I believe this is one with the connecting via USB</p> <p>10 capability.</p> <p>11 BY MR. TECHENTIN:</p> <p>12 Q. Are there any other differences that you know of</p> <p>13 between this Walker 1.0 and the Circle Swipe?</p> <p>14 A. Yeah. By the shape, the battery, the features,</p> <p>15 the communication method. Yeah.</p> <p>16 Q. What about the circuitry that's associated with</p> <p>17 the audio jack? Is that different?</p> <p>18 A. I think they're the same.</p> <p>19 Q. What about the circuitry that is associated with</p> <p>20 the mag stripe reading? Is that the same?</p> <p>21 A. Well, we made it different. Because the Circle</p> <p>22 Swipe has limited power. So we -- I remember that we</p> <p>23 simplify the method with the circuit. But this one has a</p> <p>24 battery. So this one, we may put an equipment IC instead</p> <p>25 of use the equipment component for the MasterCard</p>
<p style="text-align: right;">Page 90</p> <p>1 and this one has battery. And also the communication</p> <p>2 method. This one communicate by USB and Circle Swipe</p> <p>3 cannot. And there's a few other. Like there are -- like</p> <p>4 the lanyard holder. So it is a whole difference.</p> <p>5 Q. I think you said earlier that the early versions</p> <p>6 of the Chipper had a USB port but it only provided</p> <p>7 charging and wasn't useable for device connectivity. Do</p> <p>8 you remember that?</p> <p>9 A. Yes.</p> <p>10 Q. And this specification indicates micro-USB port</p> <p>11 for charging and/or device connection. Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. So does that change your analysis in terms of</p> <p>14 where this corresponds to the BBPOS product offerings?</p> <p>15 MS. BOZEMAN: Wait. Objection. And I'm just</p> <p>16 going to note for the record that this also does not bear</p> <p>17 any Bates stamping. So is it the same situation that this</p> <p>18 was not obtained through discovery?</p> <p>19 MR. TECHENTIN: Correct. It was taken from your</p> <p>20 client's website.</p> <p>21 MS. BOZEMAN: When you say "your client" you're</p> <p>22 referring to AnywhereCommerce?</p> <p>23 MR. TECHENTIN: Your client. Yeah.</p> <p>24 MS. BOZEMAN: Well, there's two.</p> <p>25 MR. TECHENTIN: Yeah.</p>	<p style="text-align: right;">Page 92</p> <p>1 decoding.</p> <p>2 Q. So what is the -- where does that difference get</p> <p>3 implemented in the two devices?</p> <p>4 A. So the -- it will affect the swiping speed. That</p> <p>5 is Circle Swipe, the MasterCard reading mechanism, the</p> <p>6 MasterCard circuit is implemented by the switch component.</p> <p>7 Like we use the resistor, capacitor, some transistor to</p> <p>8 implement the MasterCard circuit. But for this one</p> <p>9 instead of implement the MasterCard reading circuit by</p> <p>10 component, we use a MasterCard reading IC. So because of</p> <p>11 that, an IC is focussed on doing this method of card</p> <p>12 reading features. So this one has the capability to read</p> <p>13 the MasterCard in a much better way. Like swiping faster</p> <p>14 speed or slower speed and then you can still read it. But</p> <p>15 Circle Swipe, you can swipe so fast or so slow. It's</p> <p>16 quite limited.</p> <p>17 MR. TECHENTIN: I'm going to mark Exhibit 68</p> <p>18 which is it another AnywhereCommerce spec sheet. This is</p> <p>19 for the Rambler 3.0.</p> <p>20 (Exhibit 68 was marked for identification</p> <p>21 and is attached hereto.)</p> <p>22 BY MR. TECHENTIN:</p> <p>23 Q. Do you recognize the Rambler 3.0 as a product</p> <p>24 manufactured by BBPOS?</p> <p>25 A. Yes.</p>

BEN LO 30B6
ANYWHERE COMMERCE V INGENICODecember 10, 2021
93-96

<p style="text-align: right;">Page 93</p> <p>1 Q. And what does it correspond to in the BBPOS 2 product line?</p> <p>3 A. It didn't correspond to any BBPOS product line.</p> <p>4 Q. It doesn't correspond to any?</p> <p>5 A. No.</p> <p>6 Q. So the Rambler 3.0 was exclusive to 7 AnywhereCommerce?</p> <p>8 A. Yes.</p> <p>9 Q. How is it different from Chipper?</p> <p>10 A. Well, this one has a battery, different shape, 11 and then they have like flexible grips which can be 12 mounted to a phone.</p> <p>13 MS. BOZEMAN: Jeff. Sorry to interject, but I 14 have a COVID test I have to take. I sent you an email 15 about a hard stop. Can we take a break now?</p> <p>16 MR. TECHENTIN: Can I just finish with this 17 exhibit? It is literally like two minutes.</p> <p>18 MS. BOZEMAN: Yes. That's fine.</p> <p>19 MR. TECHENTIN: I was conscious of that and I was 20 aiming for that 3:30 or 12:30 time. I appreciate that.</p> <p>21 MS. BOZEMAN: Great.</p> <p>22 BY MR. TECHENTIN:</p> <p>23 Q. Who designed the industrial design for the 24 Rambler 3.0?</p> <p>25 A. AnywhereCommerce.</p>	<p style="text-align: right;">Page 95</p> <p>1 Circle Swipe; right? Remember that?</p> <p>2 A. Yes.</p> <p>3 Q. How do the mag stripe functionalities and 4 capabilities differ between Rambler and Walker?</p> <p>5 A. I think the Rambler and Walker, both of them has 6 battery. So they are capable to power the MasterCard 7 reading IC. So the design of this part is the same.</p> <p>8 MR. TECHENTIN: I'm going to move on. So why 9 don't we take a break now. I think you said you needed a 10 half hour or so.</p> <p>11 MS. BOZEMAN: Yeah. If we could come back at 12 1:00 that should be sufficient, if that's okay on your 13 end.</p> <p>14 MR. TECHENTIN: That's fine.</p> <p>15 THE VIDEOGRAPHER: Off the record at 12:27 P.M.</p> <p>16 (PROCEEDINGS RECESSED)</p> <p>17 THE VIDEOGRAPHER: Start of video file number 3.</p> <p>18 We're back on the record at 1:06 P.M.</p> <p>19 BY MR. TECHENTIN: Mr. Lo, had a chance to look for some 20 of the documents that you had mentioned having reviewed in 21 preparation for today's deposition. And I mentioned this 22 before, but one of the ones that you mentioned had a 23 specific Bates number, and I actually -- I pulled the 24 wrong document. You mentioned an Ingenico email, but I 25 happen to -- when I was looking for that I accidentally</p>
<p style="text-align: right;">Page 94</p> <p>1 Q. What about the -- what about the internal 2 operational aspects of it? Who designed that?</p> <p>3 A. We design it.</p> <p>4 Q. How does the audio jack functionality in the 5 Rambler 3.0 differ, if it does, from Circle Swipe?</p> <p>6 A. The audio jack in this device the audio jack will 7 get the power from the phone. And Circle Swipe get the 8 power from the phone. So the design is very big 9 different. So as the Circle Swipe get the power from the 10 phone and then, you know, we have some circuit to extract 11 the power from the phone. And then the phone has to play 12 some sign. So the Circle Swipe has to communicate with 13 the phone. It is more like two-way communication. The 14 phone will play the sign, and the Circle Swipe will make 15 use of the sign to convert into energy to power Circle 16 Swipe, but for this device, it did not extract the power 17 from the phone. It has an internal battery to power the 18 phone device. So the circle design is way different.</p> <p>19 Q. So how -- and how does the -- how does the mag 20 stripe reader in the Rambler 3.0 different from what you 21 just described for the Chipper?</p> <p>22 A. Chipper?</p> <p>23 Q. Well, sorry. Let me ask that again. We talked a 24 little bit about the Walker and you explained how its mag 25 stripe capabilities and functionalities differed from</p>	<p style="text-align: right;">Page 96</p> <p>1 found an AnywhereCommerce email with the exact same 2 number, very curiously, that I'd like to show you. I'm 3 going to have it marked as Exhibit 69. 4 (Exhibit 69 was marked for identification 5 and is attached hereto.)</p> <p>6 BY MR. TECHENTIN:</p> <p>7 Q. It's an email from Michael Kron to Mitch Cobrin 8 and Mark Diamond. You know all those individuals at 9 AnywhereCommerce; right?</p> <p>10 A. Yes.</p> <p>11 Q. And this is -- it's an email chain. But in the 12 middle -- in the middle of the page, you've forwarded an 13 email from a gentleman named Jean-Marc Thienpont; right?</p> <p>14 A. Yes.</p> <p>15 Q. Jean-Marc had written to you on June 11th, 2012; 16 right?</p> <p>17 A. Yes.</p> <p>18 Q. And he's with Ingenico; right?</p> <p>19 A. Yes.</p> <p>20 Q. And his email to you says "Hi Ben. Our chairman, 21 Philippe Lazare is currently in HK." That's Hong Kong; 22 right?</p> <p>23 A. Yes.</p> <p>24 Q. "He would be delighted to meet you. He's 25 available between 5:00 and 7:00 P.M. in case you</p>

BEN LO 30B6
ANYWHERE COMMERCE V INGENICODecember 10, 2021
105-108

Page 105	Page 107
<p>1 the EMV news and also re the agreement. Let's 2 try to talk soon. Enjoy and have a prosperous 3 New Year. Ken."</p> <p>4 And that email quoted yours; correct?</p> <p>5 A. Yes.</p> <p>6 Q. And your email was a response to another one from 7 Ken Paull which was sent on January 19th, 2013; right?</p> <p>8 A. Yes.</p> <p>9 Q. And on January 19th, 2013, Ken Paull wrote to 10 you:</p> <p>11 Hi Ben. Sorry I missed seeing you if you were 12 in the US recently. I heard from Bill that you 13 were upset about hearing that there is an 14 Ingenico EMV prototype that we are showing."</p> <p>15 Do you see that?</p> <p>16 A. Yes.</p> <p>17 Q. And so Ken Paull wrote to you on January 9th, 18 2013, about your concerns about the EMV prototype that was 19 being shown; right?</p> <p>20 A. This email, I didn't see the prototype.</p> <p>21 Q. I'm sorry?</p> <p>22 A. I didn't see the actual, actual device. I just 23 heard that they are -- they are coming with a 24 competitive -- Ingenico coming with a competitive product, 25 but I don't see the product yet. At that period of time</p>	<p>1 computer an announcement that the RP350x is coming out in 2 June of 2013; right?</p> <p>3 A. Yes. That's the announcement, but yes.</p> <p>4 Q. And then your testimony is that sometime in 2014 5 the actual product is released into the marketplace; is 6 that right?</p> <p>7 A. Yes. Because the product, it can be -- design 8 can be sold consumer. Until your product is market-ready, 9 you cannot sell the product.</p> <p>10 Q. So it's market-ready in 2014. That's what you're 11 saying?</p> <p>12 A. Yes.</p> <p>13 Q. And then at the end of 2014, so after it's market 14 ready, you see a prototype of it?</p> <p>15 A. End of 2014 I saw the prototype. I saw the 16 product in the Ingenico booth.</p> <p>17 Q. You saw a prototype?</p> <p>18 A. I saw a product.</p> <p>19 Q. So now it was the completed product that you saw 20 at the booth?</p> <p>21 A. I think so. Because some of the customers then 22 come to our booth and then ask me whether this is your 23 product, you sell similar products. So I believe the 24 Ingenico start selling the product in 2014 to some of the 25 customer.</p>
Page 106	Page 108
<p>1 I'm still trying to sell my Chipper to ROAM Data.</p> <p>2 Q. Isn't it a fact, Mr. Lo, that the Cartes trade 3 show at which you saw an EMV prototype put out by Ingenico 4 was in 2012 and not 2014?</p> <p>5 A. Can you repeat your question.</p> <p>6 MR. TECHENTIN: Would you mind reading that back.</p> <p>7 (REPORTER READS BACK)</p> <p>8 A. No.</p> <p>9 BY MR. TECHENTIN:</p> <p>10 Q. You say no?</p> <p>11 A. No.</p> <p>12 Q. Do you know when the RP350x came out?</p> <p>13 A. I think 2014.</p> <p>14 Q. Why do you think that?</p> <p>15 A. This is the time when Ingenico has the HO 16 [phonetic] devices and then they are promoting in the 17 trade show.</p> <p>18 Q. So the trade show, according to you, the trade 19 show happens at the end of the year; right?</p> <p>20 A. Yes.</p> <p>21 Q. And so there's a trade show at the end of some 22 year where you see a prototype device for an EMV reader 23 that would be released by ROAM Data; right?</p> <p>24 A. Yes.</p> <p>25 Q. And then in January of 2013 you have on your</p>	<p>1 Q. Does that make any sense to you that they would 2 start selling the product in 2014 and then they would have 3 a prototype at a trade show at the end of the year?</p> <p>4 MS. BOZEMAN: Objection. But you can answer 5 that.</p> <p>6 A. Well, but for a company like Ingenico, for a 7 company like us, if the product is a prototype, we won't 8 put in a trade show to show. Normally we put into a 9 cabinet or the secret showroom to show the product and to 10 tell the customer that this is a prototype of something we 11 are coming. But if you really show it at a trade show, 12 then I believe that this is a product where at least we're 13 doing something like this. Like we have -- we have a 14 presentation and then we show the product first. Show the 15 features of design, show the prototype, but all of this 16 product is not available yet. And then just showing -- 17 then just to explore the possibility of selling the 18 product. Because you really invest a lot of money to 19 finish all the certification on this product. So it is 20 highly unlikely until this product has a certification, 21 everything ready, so it is highly unlikely to show in a 22 trade show a prototype which is no certification, not 23 market ready. So if it is sold at a trade show, the 24 product is ready.</p> <p>25 BY MR. TECHENTIN:</p>

BEN LO 30B6
ANYWHERE COMMERCE V INGENICODecember 10, 2021
113-116

Page 113	Page 115
1 A. Okay.	1 A. From Landi.
2 Q. So Ken is telling you that they have a device and	2 Q. That they get from Landi; right?
3 it's sufficiently well developed that he can tell you that	3 A. Yes.
4 it's based on an existing Landi product; right?	4 Q. That's what you're writing?
5 A. How Ken know that?	5 A. Yes. They get from Landi. Yes.
6 Q. How does Ken know that?	6 Q. You know that that ROAM EMV card reader from
7 A. Ken is not an engineer. Ken is not an expertise	7 Landi is going to compete with Walker; right?
8 in his area. How can Ken assure that? How can he assure	8 A. Yes.
9 that there's no commonality in terms of architecture,	9 Q. And Walker is Chipper; right?
10 firmware and power. How can he do that?	10 A. Yes.
11 Q. So what did you do when you got an email from Ken	11 Q. So by this time you know that this is 18 months
12 that said --	12 before this trade show in 2014. You've seen a product
13 A. I complained.	13 release form. You've had Ken Paull explain to you that
14 Q. You complained?	14 you shouldn't be surprised that we're doing this because
15 A. Yes.	15 we've talked about it. And now you're telling
16 Q. So what Ingenico EMV prototype is Bill talking	16 AnywhereCommerce that ROAM is selling -- is going to be
17 about in this email that had gotten you upset?	17 selling an EMV audio jack card reader from Landi; right?
18 A. I don't know. He just said that they have a	18 MS. BOZEMAN: Objection. But you can answer.
19 prototype. And if -- if exactly like what like Ken said,	19 A. Yes. This is what they told me that they want
20 if they said that it's low commonality in terms of	20 to. Like the previous email. They told me that they want
21 architecture, firmware, why he want me to work together	21 to sell the card reader which is equivalent to EMV audio
22 with Ingenico? Why? Why want the license our technology?	22 jack card reader from Landi or some card reader from
23 Why? They do it different. They don't even like -- they	23 Ingenico. So everything is co-related. I'm not happy
24 don't even need to let me know. Just go ahead. If it is	24 with Ken Paull and as I'm working together for a long
25 totally different product, go ahead. Why he told me about	25 time. We sell them the Chipper and then all of a sudden
Page 114	Page 116
1 that? Is it too much? Too stupid? Why?	1 they want dual sources. That's quite weird. We have good
2 MR. TECHENTIN: I'd like to show you another	2 relationship and why they want a dual card reader. And
3 document from AnywhereCommerce. This is -- excuse me.	3 before the Chipper, then we sell them the Circle Swipe.
4 This is an email from you to Mitch Cobrin. This is	4 They were very happy, and then now -- the customers. Then
5 Exhibit 74.	5 why all of a sudden they want to swap?
6 (Exhibit 74 was marked for identification	6 Now, I try my best to tell Ken Paull and Bill that
7 and is attached hereto.)	7 our product is the best and it is not easy to come up with
8 BY MR. TECHENTIN:	8 audio jack card reader. We don't need second source. We
9 Q. And this is a little later in 2013. So this is	9 have enough capability to manufacture enough product for
10 after you have the RP350x announcement. It's after you've	10 them. And then at the same time I also share my angry,
11 had this back and forth with Ken Paull about the prototype	11 I'm unhappy. They're trying to come up -- they're trying
12 that you're upset about. Do you remember this email?	12 to come up with an EMV card reader in order to compete.
13 A. Yes.	13 Compete with us.
14 Q. And you write to Mitch: "ROAM wants to sell	14 BY MR. TECHENTIN:
15 their EMV audio jack card reader from Landi, a product	15 Q. And you even knew that this was going on at least
16 competing with Walker." Right?	16 as early as the end of 2012; right?
17 A. Yes.	17 MS. BOZEMAN: Objection. You can answer.
18 Q. So as of May 7th, 2013, you knew that there was a	18 A. What's the question?
19 ROAM product made by Landi that was competing with the	19 BY MR. TECHENTIN:
20 Walker product; right?	20 Q. You knew that ROAM Data and Ingenico were
21 A. ROAM want to sell Landi products, but I don't	21 developing a new EMV card reader that would compete with
22 know which Landi product.	22 yours in 2012; right?
23 Q. It says "ROAM wants to sell their EMV audio jack	23 MS. BOZEMAN: Objection. You can answer.
24 card reader." That's the ROAM EMV audio jack card reader;	24 A. They always were very competitive. They try to
25 right?	25 be very competitive in 2012, '15, but I never -- in my

BEN LO 30B6
ANYWHERE COMMERCE V INGENICODecember 10, 2021
121-124

<p style="text-align: right;">Page 121</p> <p>1 email if it helps. But Mark Diamond writes to Michael 2 Kron: "Both AC --" which is Anywhere Commerce "-- and 3 BBPOS want to hurt Ingenico. How can we cooperate to make 4 this happen?" That is dated August 27th of 2013.</p> <p>5 My question for you, Mr. Lo, is is that true? In 6 August of 2013 did BBPOS want to hurt Ingenico?</p> <p>7 A. That's an idiot question. How do we hurt 8 Ingenico. I think they -- they just know my email. 9 Otherwise this idea, how I do hurt Ingenico.</p> <p>10 Q. My question is whether he's right. Did BBPOS 11 want to hurt Ingenico in 2013?</p> <p>12 A. In what way?</p> <p>13 Q. I don't know. However it wanted to?</p> <p>14 A. If you don't know then I don't know in what way? 15 Ingenico is company. In what way we hurt Ingenico? You 16 don't know. You ask me but I don't know. Whether I know, 17 I don't know. I don't know what I don't know. I don't 18 know what I don't know.</p> <p>19 Q. Did you attempt to cooperate with 20 AnywhereCommerce in order to hurt Ingenico?</p> <p>21 A. No.</p> <p>22 Q. Eventually, though, you sued them; right? You 23 sued Ingenico along with AnywhereCommerce; right?</p> <p>24 A. I sued them, we will hurt them? I sued them to 25 get what I didn't get. Actually I want to add that</p>	<p style="text-align: right;">Page 123</p> <p>1 A. Because AnywhereCommerce has gateways and then we 2 have the hardware. We are exploring, just exploring is it 3 possible to develop revenue with a current revenue model? 4 Let us sell the product and get some transactions free. 5 So this is just exploring.</p> <p>6 Q. How does your IP portfolio generate recurring 7 revenue?</p> <p>8 A. IP mean many thing. AnywhereCommerce, at that 9 period of time, they have the gateway. They have the 10 payment gateway and then we have a product. So product is 11 also IP. I think together with our product, with the 12 gateway, the application, together offer an important 13 solution to a customer to create revenue. This is what I 14 mean. I don't mean a pattern specifically with this 15 email. An IP portfolio is a portfolio of products.</p> <p>16 MR. TECHENTIN: Can we take a break for like ten 17 minutes? I'm going to switch gears.</p> <p>18 THE VIDEOGRAPHER: Off the record at 1:54 P.M. 19 (PROCEEDINGS RECESSED AT 1:54 P.M.) 20 (PROCEEDINGS RECONVENED AT 2:11 P.M.) 21 THE VIDEOGRAPHER: Back on the record at 22 2:11 P.M.</p> <p>23 MR. TECHENTIN: Mr. Lo, before we turn to another 24 topic I just wanted to ask you about one more document. 25 I'm going to mark this as Exhibit 77. This is not a Bates</p>
<p style="text-align: right;">Page 122</p> <p>1 Ingenico hurt us first. So I -- I would get that money 2 from them.</p> <p>3 Q. So if we go back to Exhibit 74 really quickly, 4 that is the May 7th, 2013 email that you sent to Mitch 5 Cobrin of AnywhereCommerce. It's a little couple of 6 months before AnywhereCommerce is discussing the fact that 7 both they and you want to hurt Ingenico, and you say to 8 Mitch Cobrin, "We need to leverage our IP portfolio to 9 develop recurring revenue model in some markets." And 10 that's after you talk about the fact that ROAM wants to 11 complete with an EMV reader; right?</p> <p>12 A. Yes.</p> <p>13 Q. Leveraging your IP portfolio is a euphemism for 14 asserting patent infringement; right?</p> <p>15 A. Can you repeat your questions.</p> <p>16 Q. Leveraging your IP portfolio is a euphemism for 17 asserting patent infringement; right?</p> <p>18 MS. BOZEMAN: Objection. You can answer.</p> <p>19 A. No. We are saying we are using our IP portfolio 20 to develop recurring revenue. So clear in the email. How 21 come you come up with this interpretation assuming patent 22 infringement?</p> <p>23 BY MR. TECHENTIN:</p> <p>24 Q. Well, how does an IP portfolio develop recurring 25 revenue?</p>	<p style="text-align: right;">Page 124</p> <p>1 numbered document, but my understanding is that the 2 document was produced. It has a Bates number. It's an 3 Ingenico Bates number of 0089952. And Mr. Lo, this is the 4 press release from Ingenico announcing the release of its 5 RP350x product.</p> <p>6 (Exhibit 77 was marked for identification 7 and is attached hereto.)</p> <p>8 BY MR. TECHENTIN:</p> <p>9 Q. Have you seen this before?</p> <p>10 A. No.</p> <p>11 Q. This is dated April 30th of 2013, and it 12 announces that ROAM, an Ingenico company in the leading 13 mobile commerce platform provider today announced the 14 release of the RP350x the world's first ever PCI-PTS and 15 SRED-certified chip and sign mobile card reader. Do you 16 see that?</p> <p>17 A. Yes.</p> <p>18 Q. Does BBPOS do anything to keep itself abreast of 19 developments in the mPOS marketplace?</p> <p>20 A. Can you rephrase your questions.</p> <p>21 Q. Does BBPOS pay attention to the competitive 22 environment for mPOS devices?</p> <p>23 A. No.</p> <p>24 Q. You don't do anything to figure out what your 25 competitors are doing?</p>

BEN LO 30B6
ANYWHERE COMMERCE V INGENICODecember 10, 2021
125-128

Page 125	Page 127
1 A. We just have one major customer, called ROAM. So 2 we don't do much product competitive analysis. 3 Q. So you wouldn't pay attention to the fact that 4 your only customer, ROAM, issued a press release 5 announcing that they had a product that directly competed 6 with your Chipper product? 7 A. No. I just trust my customer. 8 Q. Does this refresh your recollection as to when 9 the RP350x was actually a competitive product on the 10 market? 11 A. No. 12 Q. You'd agree with me, though, that if the RP350x 13 was actually released as a final product on April 30th of 14 2013 it wouldn't make any sense for there to be a 15 prototype of that product at a trade show over 18 months 16 later; right? 17 MS. BOZEMAN: Objection. But you can answer. 18 A. You're talking about it came out later in October 19 2014? As I said, 2014 I saw the actual product in 20 exhibition. So I didn't read this news. So what's your 21 question? Are you asking did I read this news saw the 22 product? I didn't witness news. 23 BY MR. TECHENTIN: 24 Q. So in early -- in January of 2013 you're upset 25 with ROAM because they're talking about two tracking the	1 fake. So this is for review only. 2 Q. You thought that this brochure was a deep fake 3 and there really wasn't an RP350x? 4 A. I don't know. 5 Q. So you see -- so you acknowledge you saw this 6 brochure; right? 7 A. Yes. 8 Q. You put it on your computer -- you saved it to 9 your computer; right? 10 A. Yes. 11 Q. So in January of 2013 you see this product 12 preview for a product that's going to come out of the 13 market from your primary customer that's going to directly 14 compete with your primary product; right? 15 MS. BOZEMAN: Objection. But you can answer. 16 A. Yes. 17 BY MR. TECHENTIN: 18 Q. But you didn't think maybe this is a thing I need 19 to pay attention to? 20 A. Yes. But ROAM Data can -- well, first of all 21 this is just a brochure, and then ROAM Data can -- well, 22 if they want, they can use any product like from Ingenico 23 or from Landi. But just -- just -- I wrote Ken Paull then 24 well, BBPOS product is the best. 25 Q. And so your testimony today on behalf of BBPOS is
Page 126	Page 128
1 EMV reader; right? 2 A. Yes. 3 Q. And in -- also in January of 2013 you receive an 4 announcement that there's this product called the RP350x 5 that's going to be coming out and that's going to compete 6 directly with your Chipper; right? 7 A. I don't receive this announcement. 8 Q. Well, the announcement was on your computer in 9 January of 2013; right? 10 MS. BOZEMAN: Objection. But you can answer. 11 A. Well, there's so many that's in the world. 12 There's so many documents in the world, so I didn't read 13 this document. 14 BY MR. TECHENTIN: 15 Q. Just so we're clear, we're talking about 16 Exhibit 72 which is a product preview for a ROAM Data 17 RP350x mobile card reader that says it's going to be 18 available in June 2013, and it's -- and you're the 19 custodian of this document. You are telling me you never 20 saw this? 21 A. This is like a -- I share with you that this is 22 a -- I don't see these products. The actual products. 23 This is just a brochure. 24 Q. Right. You saw the brochure, though; right? 25 A. The brochure can be design. It can be something	1 that despite having this brochure and despite the fact 2 that the RP350x became commercially available in April of 3 2013, you didn't know anything about that product's 4 existence, the actual product, until you saw it at a trade 5 show at the end of 2014? 6 MS. BOZEMAN: Objection to the introduction of a 7 fact that this was commercially available in 2013. Mr. Lo 8 never testified to that. 9 BY MR. TECHENTIN: 10 Q. I know that. You can answer the question now. 11 A. What is your question? 12 Q. Your testimony today is that despite having 13 knowledge going back to 2012 that ROAM was developing a 14 competitive product to the Chipper product, and in 2013 15 complaining about that as being unfair, and in 2013 16 knowing that the product was -- that Ingenico was saying 17 it was going to come out in June, you knew nothing about 18 this product until you actually saw one at a trade show 19 over a year and a half later? 20 A. Yes. I -- when ROAM Data come up with a product, 21 so this product is a brochure. In 2014 I saw an actual 22 product in the Ingenico booth and then before that I never 23 see actual products. Everything I saw is just a -- like 24 just a -- just a -- just some brochure. I don't see the 25 actual product. I don't assess the actual product.

BEN LO 30B6
ANYWHERE COMMERCE V INGENICO

December 10, 2021
133-136

<p style="text-align: right;">Page 133</p> <p>1 information, 1, as a part of Ingenico's purported due 2 diligence investigation in or around 2012 in relation to 3 its supposed interest in acquiring the plaintiff and, 2, 4 from ROAM, through Ingenico's acquisition thereof."</p> <p>5 Do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. Is it accurate to state that the trade secrets 8 that have been asserted here were obtained as part of 9 purported due diligence efforts?</p> <p>10 A. Yes.</p> <p>11 MR. TECHENTIN: All right. So let's talk about 12 that a little bit. I'm going to have marked as Exhibit 78 13 a set of schematics.</p> <p>14 (Exhibit 78 was marked for identification 15 and is attached hereto.)</p> <p>16 BY MR. TECHENTIN:</p> <p>17 Q. And they are Bates numbered BBPOS-0005601 through 18 5606.</p> <p>19 Do you recognize these schematics?</p> <p>20 A. Yes.</p> <p>21 Q. And are these part of the trade secrets that you 22 contend were misappropriated in this case?</p> <p>23 A. I leave that to the experts. As all technical 24 information that we sent to ROAM Data can potentially be a 25 trade secret. All the information that we send to ROAM</p>	<p style="text-align: right;">Page 135</p> <p>1 magnetic strips card reader circuit. The fourth page is a 2 -- another MCU sub-circuit. And with a power circuit. 3 Last one, circuit. So all of these circuits is the 4 component, one of the components of the card reader.</p> <p>5 Q. And which, if any, of these secret designs are 6 present in any Ingenico products?</p> <p>7 A. I leave that to the IP experts to answer the 8 questions.</p> <p>9 Q. And I think we can short circuit this because you 10 testified about this on Wednesday, and I understand you've 11 adopted all that testimony.</p> <p>12 BBPOS has relied primarily upon its outside expert 13 to analyse these issues; correct?</p> <p>14 A. Yes.</p> <p>15 Q. And the only internal investigation that you made 16 reference to on Wednesday was done by your primary 17 hardware engineer; correct?</p> <p>18 A. Well, at this time if you ask me, I will say yes, 19 it was. All the circuit may be adopted by Ingenico, but 20 adopted by Ingenico, but eventually I believe that -- 21 If you ask my opinion, I would say that anything 22 you can copy, improve it, modify it to change it, but 23 specifically which part Ingenico referred to, I leave that 24 to IP expert. Even though engineer Daniel then -- well, 25 people say -- if on the other hand Ingenico is saying</p>
<p style="text-align: right;">Page 134</p> <p>1 Data, we will consider them a trade secret. I'm not sure 2 whether this is trade secret being misappropriated by ROAM 3 Data. I'm no expert. I hire the expert to do that.</p> <p>4 Q. I'm asking about ROAM Data's contentions in this 5 case, and you're here. Respectfully you're here to 6 testify for ROAM. So my question is, are these schematics 7 among the trade secrets that BBPOS contends that Ingenico 8 stole?</p> <p>9 MS. BOZEMAN: You were referring to him appearing 10 on behalf of ROAM Data?</p> <p>11 MR. TECHENTIN: Did I say that?</p> <p>12 MS. BOZEMAN: Yes.</p> <p>13 MR. TECHENTIN: Obviously that would be awkward 14 so, no. He's here on behalf of BBPOS. Sorry about that.</p> <p>15 BY MR. TECHENTIN:</p> <p>16 Q. As the representative of BBPOS is it your 17 contention that these schematics form part of the trade 18 secrets that were stolen by Ingenico?</p> <p>19 A. Yes.</p> <p>20 Q. What is the -- what's the function that is 21 described by these schematics in Exhibit 78?</p> <p>22 A. What's the function? This is a schematic of the 23 Chipper. So in this diagram you see that, like the first 24 page, the first page about the MCU. The second page, like 25 about the EMV card reader circle. The third page is the</p>	<p style="text-align: right;">Page 136</p> <p>1 that's the circuit diagram and then they will -- and come 2 up with maybe a better circuit or similar circuit. So 3 which part has been copied or which part has been used in 4 the Ingenico product I leave that to IP experts.</p> <p>5 Q. I'm sorry. I don't know that that was responsive 6 to my question.</p> <p>7 MR. TECHENTIN: So I'm going to ask, if I may, to 8 have the court reporter read that question back, again 9 please.</p> <p>10 (REPORTER READS BACK)</p> <p>11 A. Yes.</p> <p>12 BY MR. TECHENTIN:</p> <p>13 Q. And that's Daniel is the engineer?</p> <p>14 A. Yes.</p> <p>15 Q. And I think you said that he had examined at 16 least one of the Ingenico devices; correct?</p> <p>17 A. Yes.</p> <p>18 Q. And he had reported to you that the circuit 19 associated with the automatic gain control was the same in 20 the Ingenico product as was in the Chipper; is that right?</p> <p>21 A. Many part like these, the audio jack part and 22 automatic gain control. There are many parts the same.</p> <p>23 Q. What did he say, then? Explain. Explain what he 24 described to you as was the result of his investigation.</p> <p>25 A. Well, he just verbally talked to me. I don't</p>

BEN LO 30B6
ANYWHERE COMMERCE V INGENICODecember 10, 2021
137-140

Page 137	Page 139
1 remember that. But he said some circuit that Ingenico 2 copy us.	1 Q. So it would be fair to say that BBPOS is capable 2 of answering that question as an organization; right?
3 Q. Which circuit?	3 A. Yes.
4 A. Like the polarity. The audio jack polarity. The 5 automatic gain control.	4 Q. But you can't?
6 Q. Anything else?	5 A. I cannot.
7 A. I don't remember. If you ask me, I don't 8 remember.	6 MS. BOZEMAN: As to this one particular schematic 7 you're asking?
9 Q. Is this something you discussed with Daniel in 10 your most recent telephone call with him?	8 MR. TECHENTIN: Well, we're going to have more of 9 those, but yes.
11 A. I just asked him whether he remembered, you know, 12 how much -- which product, which part is copied. And then 13 Daniel told me that he -- yeah, yesterday he told me that 14 he was pretty sure the audio jack part, Ingenico copied 15 us.	10 A. I leave that to expert. I don't know what this 11 specific schematic. I don't know.
16 Q. What does that mean, "the audio jack part"?	12 BY MR. TECHENTIN:
17 A. Because the audio jack has this like a polarity 18 issue. We solved the polarity issue. There must be a way 19 to do that. And this is what Daniel told me yesterday, 20 that he pretty sure that polarity part, Ingenico copied 21 us.	13 Q. So we talked a little bit on Wednesday about the 14 efforts that BBPOS employs to keep its secrets secret. 15 How is this set of schematics kept confidential at BBPOS?
22 Q. Did Daniel say anything else about what he found 23 when he examined the Ingenico product?	16 A. How is it kept confidential? Put that in our -- 17 in our PC.
24 A. He don't remember that. He just got them sure 25 this polarity part. This is what he told me.	18 Q. And what steps are taken to protect its 19 confidentiality?
Page 138	
1 Q. Did he say anything to you when you talked 2 yesterday about automatic gain control?	20 A. What steps to protect the confidentiality?
3 A. No.	21 Q. Yes.
4 Q. So you yesterday asked Daniel what he remembered 5 about the investigation and he said polarity, but he 6 didn't say automatic gain control; right?	22 A. Well, just -- we just store in the PC, and the PC 23 can only be accessed by certain engineer.
7 A. Yes. He told me that polarity issue, and that he 8 opened -- open the devices and he do the investigation, 9 but it's too long. Long time ago. He don't remember. 10 But he's pretty sure the polarity part, they copied us.	24 Q. Are there any restrictions on the distribution of 25 these materials?
11 Q. Did you happen to ask Daniel which device or 12 devices he had examined?	
13 A. He forget that.	
14 Q. And I think you said that page 6 of this 15 Exhibit 78 are the -- is the schematic for the audio jack; 16 right?	
17 A. I guess. I just guess. But I'm not a -- I'm not 18 an actual designer of this product.	
19 Q. Can you tell me where the -- or whether the 20 schematic at page 6 of this exhibit discloses the polarity 21 solution that BBPOS implements?	
22 A. I'm not an expert in this area. So I will leave 23 that to the experts.	
24 Q. Would Daniel know the answer to that question?	
25 A. Yes.	
Page 140	
	1 A. Yes. Absolutely.
	2 Q. What are the instructions?
	3 A. We won't -- we won't send a circuit diagram to 4 anyone if it's not necessary.
	5 Q. So how are those restrictions imposed?
	6 A. Well, we just don't send.
	7 Q. Well, is there some control on the file that 8 would prevent it from being distributed without a 9 permission?
	10 A. Yes. This file is normally, you know, keeping 11 our engineer. So we -- it's not necessary for us to send 12 to anyone. So no.
	13 Q. Are the files password protected?
	14 A. I'm not sure.
	15 Q. Do you have employment agreements with the 16 engineers who work with you?
	17 A. Yes.
	18 Q. Do those employment agreements have restrictions 19 on the distribution of confidential information?
	20 A. Yes.
	21 Q. And so presumably those employment agreements 22 prevent the engineers from simply sending out company 23 confidential information; right?
	24 A. Yes.
	25 Q. How do they know whether a particular document is

BEN LO 30B6
ANYWHERE COMMERCE V INGENICODecember 10, 2021
141-144

Page 141	Page 143
1 company confidential?	1 A. Well, if there's a partner agreement we send to
2 A. All engineering file confidential. Basically all	2 them. But if we send the document to them, we send the
3 engineering file are confidential.	3 document to them, but this document still protected, the
4 Q. And what does that mean? If it's confidential,	4 confidentiality of this document is protected by the
5 under what circumstances would someone be permitted to	5 agreement. And then if we have to work together, maybe
6 share the document?	6 they want to review, maybe they have their own reasons.
7 A. Well, I told them to send to -- if I told them to	7 So for ROAM and BBPOS. So we will send to them, and this
8 forward to customer like ROAM then they would follow my	8 information will be protected by agreement.
9 instruction.	9 Q. What does that mean, that it is protected by
10 Q. Is that true for Daniel Tsai?	10 the agreement?
11 A. Yes.	11 A. The 6.3 of the agreement, that for information
12 Q. Does he have the right to make that decision	12 that we send to ROAM, that ROAM will take care, will treat
13 himself?	13 this document as confidential document.
14 A. Does he have the right to make the decision to	14 Q. So before you gave away -- before you gave these
15 send this file to anyone without my instruction? No, he	15 schematics to ROAM, did you have any agreement with ROAM
16 doesn't have the right to send to anyone without my --	16 in place that would require these to be confidential?
17 well, if I told him to send he would send; otherwise, he	17 A. Yes. The document protect us that all of this
18 would not send.	18 information shall be keep confidential.
19 Q. So Daniel Tsai still has to get permission from	19 Q. And what's that agreement?
20 you before he would share any of this information;	20 A. The development -- the engineering -- the
21 correct?	21 agreement that you showed to me before.
22 A. Yes.	22 Q. That's the --
23 Q. Is there anyone else in the company other than	23 A. -- license agreement, yeah.
24 yourself who can authorize the disclosure of confidential	24 Q. That agreement requires ROAM to treat any
25 information?	25 information that you give them ever as confidential?
Page 142	Page 144
1 A. Maybe. Like Jimmy Tang. Like some very senior	1 A. Yes.
2 staff. Some early, very early senior staff. But most of	2 Q. Maybe we should take a look at it. You were able
3 the time it is Jimmy Tang and Daniel Tsai will do the	3 to cite a very specific provision in that agreement a few
4 distribution.	4 minutes ago. Can you direct my attention to where that
5 Q. Why was this set of schematics provided to ROAM?	5 provision can be found in that agreement?
6 A. Because Will Graylin told me to do that.	6 A. Can you show me the agreement.
7 Q. Why did Will tell you to do that?	7 Q. Sure. It's Exhibit 23.
8 A. No. Because this is -- this document is ROAM	8 A. Document 23?
9 Data request me to do that, to send to them for review.	9 Q. Exhibit 23. It's document 8, I think.
10 Q. Why did they need to review it?	10 MS. BOZEMAN: That's just the amendment. 7 is
11 A. Why do they want to review? I don't know.	11 the licensing agreement.
12 Q. Was that enough reason for you to disclose	12 MR. TECHENTIN: No.
13 company confidential information to ROAM?	13 MS. BOZEMAN: Oh, sorry.
14 A. Because we have an agreement with ROAM that we	14 MR. TECHENTIN: Yeah, it's 23.
15 give -- if ROAM ask me -- if ROAM request us to give	15 MS. BOZEMAN: I'm sorry. I apologize.
16 information for them to review we have to do that.	16 A. Page 6, provision 6.3, under "Confidentiality."
17 Q. And is that -- so you have an agreement with ROAM	17 BY MR. TECHENTIN:
18 and the agreement with ROAM says you have to give us any	18 Q. So you're referring to 6.3. 6.3 talks about
19 documents we ever ask for?	19 disclosure of confidential information to contractors.
20 A. Yeah. And if necessary that if they need to get	20 ROAM is not your contractor, though; right?
21 the document from me and then send to other for review,	21 A. Yeah. Contractor. Lawyer. Accountant. Agent.
22 yes, we send to them. But for all document that we send	22 Q. I think, in fairness, if you look at 6.1, 6.1
23 to ROAM, they are protected by agreements.	23 talks about treating each other's confidential information
24 Q. What agreement with ROAM requires you to give	24 confidentially. Do you see that?
25 them any documents that they ask for?	25 A. Yes.

BEN LO 30B6
ANYWHERE COMMERCE V INGENICODecember 10, 2021
145-148

Page 145	Page 147
1 Q. And then 6.2 has a definition of confidential 2 information because that's a capitalized term in this 3 agreement; right? 4 A. Yes. 5 Q. And in order for it to be Confidential 6 Information, capital C, capital I, you have to tell the 7 other party that it's confidential; right? 8 MS. BOZEMAN: Objection. 9 A. I'm not a lawyer. 10 For information that we send to a party, and in 11 particular the engineering, schematic issues, I would 12 think that they're confidential. 13 BY MR. TECHENTIN: 14 Q. Did you mark these schematics as "confidential"? 15 A. No. 16 Q. So why did you make this disclosure of schematics 17 to ROAM? What was the purpose of communicating them? 18 A. I forget. 19 Q. Was it part of due diligence? 20 A. I forget. 21 MR. TECHENTIN: I'm going to show you Exhibit 79. 22 (Exhibit 79 was marked for identification 23 and is attached hereto.) 24 BY MR. TECHENTIN: 25 Q. This is an email from Jimmy Tang to Christopher	1 Mr. Lazare which happened, I think we agreed today, on 2 June 11th; right? 3 A. Yes. 4 Q. And this email is being sent on July 18th, 2012, 5 so it would not be in the due diligence period; correct? 6 A. Yes. 7 Q. So why was Jimmy Tang sending ROAM Data the EMV 8 flow and two-way communication docs on July 18th, 2012? 9 A. Again, ROAM Data is a software company and we're 10 a hardware company, and then not only the due diligence. 11 I think before [indiscernible] somehow we're sending 12 information to ROAM, but for what specific reason, I don't 13 know. 14 Q. Did BBPOS -- strike that. 15 Was BBPOS engaged in a collaborative effort during 16 2012 with Ingenico in order to be able to create a new EMV 17 capable mPOS device? 18 A. I think that we may discuss that. We may discuss 19 that, but the detail, I forget. 20 Q. Isn't it the fact, Mr. Lo, that during 2012, 21 BBPOS was engaged in two different efforts to be able to 22 come out with an EMV capable reader? 23 A. Yes. 24 Q. And one of those efforts was internal; correct? 25 A. One of the efforts internal? What is the
1 Rotsaert, and it's a short email. "Hi Chris. This is the 2 draft of the EMV flow and two-way communication docs. 3 Jimmy." Does Jimmy have the right to disclose company 4 confidential information without reporting to you? 5 A. No. Jimmy report to me. And then if he want to 6 send confidential information to anyone, he has to let me 7 know. So normally I told Jimmy to send. 8 Q. So did you approve of Jimmy sending this material 9 to Christopher Rotsaert? 10 A. Yes. 11 Q. And is this attached information, this EMV flow 12 document dated 2nd July, 2012, is that trade secret 13 information? 14 A. I would think so, yes. 15 Q. And the same thing with this two-way 16 communication document dated 19th June, 2012? 17 A. Yes. 18 Q. Why was this information shared with ROAM? 19 A. I don't remember the reason why. 20 Q. What it part of due diligence? 21 A. I don't know. 22 Q. Well, I think we agreed on Wednesday that the due 23 diligence period would have run from when the term sheet 24 was signed by BBPOS and ROAM at the end of March of 2012, 25 and would have ended by the time of your meeting with	1 previous question? 2 Q. One of the efforts that BBPOS was engaged in to 3 create an EMV capable mPOS reader during 2012 was to try 4 to create it itself; right? 5 A. Yes. 6 Q. And the other effort that was underway in 2012 7 was to explore the possibility of utilizing BBPOS's audio 8 jack technology in connection with the Telium-based mPOS 9 technology that had been developed by Valence at Ingenico; 10 right? 11 A. Well, in my opinion this is still ROAM. We 12 assist ROAM not Ingenico. 13 Q. Well, you understood that Ingenico and ROAM were 14 different companies; right? 15 A. Yes. 16 Q. But, in any event, you understood that Ingenico 17 at its France R&D laboratory in Valence -- 18 A. Yes. 19 Q. -- was working on technology that included 20 something called a "Telium chip"; right? 21 A. Yes. 22 Q. And -- and the Telium chip was a much more robust 23 chip set than what was in the Circle Swipe; right? 24 A. Yes. 25 Q. And that made it more expensive; correct?

BEN LO 30B6
ANYWHERE COMMERCE V INGENICODecember 10, 2021
153-156

Page 153	Page 155
1 A. Correct.	1 Q. You'd agree that the July 17th transfer date
2 Q. This was provided in order to enable the	2 takes this outside of the scope of due diligence; right?
3 engineers who were attempting to integrate the Telium	3 A. Yes.
4 product and your audio jack solution to be able to	4 MR. TECHENTIN: I'm going to have marked
5 complete that engineering; right?	5 Exhibit 82.
6 MS. BOZEMAN: Objection. But you can answer.	6 (Exhibit 82 was marked for identification
7 A. Maybe.	7 and is attached hereto.)
8 BY MR. TECHENTIN:	8 BY MR. TECHENTIN:
9 Q. Do you have any other explanation as to why you	9 Q. This is an email from Jimmy Tang to Christopher
10 were sharing this trade secret confidential information	10 Rotsaert with a bunch of CCs: You see that; right?
11 with a third party?	11 A. Yes.
12 MS. BOZEMAN: Objection. You can answer.	12 Q. And this has a subject line "re: IWL-android
13 A. This is not a third party. Christopher is a ROAM	13 with ROAM Data solution." Do you see that?
14 people. So they may want to -- I sent to ROAM, so they	14 A. Yes.
15 may want to review it.	15 Q. These are the attachments to this which are
16 BY MR. TECHENTIN:	16 listed as "swiper API android guy.doc." Is that a trade
17 Q. ROAM Data is not part of BBPOS; right?	17 secret?
18 A. Yes.	18 A. Yes.
19 MR. TECHENTIN: I'm going to show you Exhibit 81,	19 Q. I think you would agree that the February 28th,
20 and this is another Daniel Tsai email to Christopher	20 2012 transfer date would fall outside of the due diligence
21 Rotsaert.	21 period; right?
22 (Exhibit 81 was marked for identification	22 A. Yes.
23 and is attached hereto.)	23 Q. So why was Jimmy Tang sending trade secret
24 BY MR. TECHENTIN:	24 information to Christopher Rotsaert in February?
25 Q. And this attaches more schematics; right?	25 A. I don't remember. But like when ROAM asked me to
Page 154	Page 156
1 A. Yes.	1 send some data to them, they must be -- have some reason.
2 Q. Do you know what these schematics represent?	2 But I don't remember the exact reason.
3 A. Email. This is PayPal G4X. G4X method.	3 Q. The CCs for this include a guy by the name of
4 Q. This is the G4X?	4 Jerome Grandemenge. Do you see that?
5 A. Yes.	5 A. Yes.
6 Q. Is that -- that's a product that ROAM sells to	6 Q. And he's with Ingenico in Valence; right?
7 PayPal; right?	7 A. Yes. I think so. I'm not sure.
8 A. Yes.	8 Q. Does the IWL subject line -- strike that.
9 Q. And it bought that from BBPOS?	9 Earlier today you made some -- you offered some
10 A. Can you repeat your questions?	10 testimony about a project that you had been working on
11 Q. The G4X, it bought that from BBPOS; right?	11 with ROAM that concerned technology that would be for a
12 A. Yes.	12 casino.
13 Q. And that's -- so that's reflected in the subject	13 A. Yes.
14 line which is "PayPal G4X - schematic."	14 Q. Is that the IWL project?
15 Are these schematics trade secrets?	15 A. I don't remember that. I'm not sure.
16 A. Yes.	16 Q. Because you'd also mentioned that that had to do
17 Q. And they were shared on July 17th, 2012. Do you	17 with the ROAM player. You remember that; right?
18 know why Daniel Tsai sent this to Christopher Rotsaert?	18 A. Yes.
19 A. I think Chris -- I think ROAM Data may want to be	19 Q. And if you look through this email before you get
20 together with PayPal about some circuit. Because customer	20 to the attachment, there are numerous, or at least a few,
21 like PayPal. They would like to be before they buy the	21 references to ROAM player.
22 product from ROAM Data.	22 A. You said this email talking about ROAM players?
23 Q. Do you know if the information contained in this	23 Q. Sorry, I couldn't hear that.
24 exhibit was incorporated into the RP350x?	24 A. You said this email talking about ROAM players?
25 A. I don't know.	25 Q. Yes. I think if you look on the fourth page,

BEN LO 30B6
ANYWHERE COMMERCE V INGENICODecember 10, 2021
169-172

Page 169	Page 171
1 A. I don't know.	1 them; right?
2 Q. And Bob at David -- Bob and Chris discussed the	2 A. I think we're trying to sell Chipper to NAB, yes.
3 fact that BBPOS and NAB openly discussed NAB's	3 Q. And you wanted -- and you accepted an order for
4 cancellation of an order for MSR devices that NAB recently	4 that so that you could sell your product directly to NAB
5 placed with ROAM Data that is scheduled to be fulfilled by	5 and cut out ROAM Data from the order that it had already
6 BBPOS prior to year end; right?	6 received NAB; right?
7 A. I don't know.	7 A. No. No.
8 Q. Do you remember this situation happening at the	8 Q. Well, you discussed with NAB -- BBPOS discussed
9 end of 2015?	9 with NAB cancel your order with ROAM Data because we can
10 A. I remember that. Like we are selling some	10 sell you this Chipper product instead; right?
11 product to North American Bancard for Chipper. But	11 A. I don't remember that.
12 MasterCard, I don't remember that we get order from them.	12 Q. That's what David is saying to Bob in this email;
13 We get order from them. Like we cancel because of the	13 right?
14 ROAM agreement. But after we receive this email from	14 A. Yes.
15 Ingenico, it is highly likely that we will cancel the	15 Q. And in fact North American Bancard reached out
16 order with North American Bancard.	16 ROAM Data and said cancel our order; right?
17 Q. So North American Bancard had placed an order for	17 A. That's what the email said, yeah.
18 devices with ROAM that were going to be fulfilled by BBPOS;	18 Q. And BBPOS requested that ROAM Data permit North
19 correct?	19 American Bancard to cancel the purchase order so that
20 A. Yes.	20 BBPOS could fulfill it; right?
21 Q. And BBPOS contacted North American Bancard to try	21 A. I don't know.
22 to sell directly to North American Bancard; right?	22 Q. What was BBPOS's reaction to receiving this cease
23 A. We contact North American Bancard to sell	23 and desist letter?
24 Chipper.	24 A. When received this letter? I think that we will
25 Q. You contacted North American Bancard to sell	25 be asked to stop selling. If we are really selling Circle
Page 170	Page 172
1 directly to North American Bancard; right?	1 Swipe to NAB, then we shall stop. We stop sell it.
2 A. Yes. For Chipper. For Chipper product.	2 Q. What was the last part? I'm sorry. I didn't
3 Q. You wanted to sell to ROAM's customer but you	3 catch that?
4 wanted to sell a different product; is that what you're	4 A. We shall stop selling.
5 saying?	5 Q. You stopped selling?
6 A. Yes. Because this email says "ROAM-type MSR	6 A. Yes.
7 device." What's that? Is it Circle Swipe, or ...? I	7 MR. TECHENTIN: So I'll show you Exhibit 86.
8 don't know what's that.	8 (Exhibit 86 was marked for identification
9 Q. And you knew that North American Bancard had	9 and is attached hereto.)
10 actually placed an order because you were scheduled to	10 BY MR. TECHENTIN:
11 fulfill that order; right?	11 Q. This is an email from Matthew Ng. Is he your
12 A. Yes. It can be Chipper.	12 finance director?
13 Q. Well, the order was for whatever ROAM was going	13 A. Yes.
14 to sell them; correct?	14 Q. If you go through this email, after David
15 A. I don't know.	15 Szczepanski sent that cease and desist, Alex Choi wrote to
16 Q. Let's break this down. North American Bancard	16 Bob Cook, you and Matthew Ng suggesting that you have a
17 placed an order for magnetic stripe reader devices from	17 meeting as soon as you're back in the office; right?
18 ROAM Data; right?	18 A. Yes.
19 A. Yes.	19 Q. Did you have that meeting?
20 Q. And you were scheduled to fulfill those before	20 A. Yes.
21 the end of 2015; right?	21 Q. And that's reported in Matthew Ng's email at the
22 A. Yes.	22 beginning of this exhibit; rights?
23 Q. And instead of that happening you got in touch	23 A. Yes.
24 with North American Bancard and tried to sell something	24 Q. And he -- so he informs Bob:
25 else to them instead of what ROAM had already sold to	25 Ben, Alex and I had a quick discussion and

BEN LO 30B6
ANYWHERE COMMERCE V INGENICO

December 10, 2021
173-176

Page 173	Page 175
<p>1 concluded as below as recap and update you."</p> <p>2 The first one is "do not take the order from NAB</p> <p>3 re Swiper as BBPOS is not well prepared for it."</p> <p>4 What does that mean?</p> <p>5 A. That means we cannot take the order from NAB as</p> <p>6 we are an agreement with ROAM Data for not selling Circle</p> <p>7 Swipe to NAB. So we should cancel the order.</p> <p>8 Q. Then it says:</p> <p>9 Alex will reply below formal email from Ingenico</p> <p>10 and bring me in as formal contact point, details</p> <p>11 can refer to Alex, reply email to be sent out."</p> <p>12 And then the last bullet point reads:</p> <p>13 We will need to plan for cooperation strategy</p> <p>14 with ROAM in short term and long term," and then</p> <p>15 it's in all caps "WISELY." What did that mean?</p> <p>16 A. That means that if it happen again we have to</p> <p>17 tell ROAM Data that how to deal with the situation instead</p> <p>18 of take order from NAB and do this stupid thing. So my</p> <p>19 view is get wise and talking. So we cannot take order</p> <p>20 without Swiper from any other customer except ROAM. So</p> <p>21 except with some strategy with ROAM Data to -- if customer</p> <p>22 come directly to us, we refer to them, or even if we take</p> <p>23 the order, we have to pass all the profit back to ROAM. I</p> <p>24 think this is what he means.</p> <p>25 MR. TECHENTIN: So I'll mark Exhibit 87.</p>	<p>1 Please confirm that BBPOS will respect the</p> <p>2 exclusivity provisions of the May 4th, 2010</p> <p>3 "Engineering Development and License Agreement"</p> <p>4 between ROAM Data and BBPOS and will not sell</p> <p>5 any MSR devices directly to ROAM customers</p> <p>6 including NAB."</p> <p>7 Did BBPOS do that?</p> <p>8 A. Yes.</p> <p>9 Q. So BBPOS has never sold a magnetic stripe reader</p> <p>10 device to NAB since this happened?</p> <p>11 A. Yes.</p> <p>12 Q. Has ROAM Data sold -- excuse me. Has BBPOS sold</p> <p>13 any card readers to NAB since this communication?</p> <p>14 MS. BOZEMAN: Objection.</p> <p>15 A. I think we sell a chip card type product to ROAM</p> <p>16 Data.</p> <p>17 BY MR. TECHENTIN:</p> <p>18 Q. To ROAM Data or NAB?</p> <p>19 A. To NAB.</p> <p>20 Q. And that's a magnetic stripe reader product?</p> <p>21 A. That is a EMV card reader.</p> <p>22 Q. It doesn't read a mag stripe?</p> <p>23 A. It's EMV card reader. It also has -- it also can</p> <p>24 read the MSR.</p> <p>25 Q. So I'll ask that question again: Has BBPOS sold</p>
<p>1 (Exhibit 87 was marked for identification</p> <p>2 and is attached hereto.)</p> <p>3 BY MR. TECHENTIN:</p> <p>4 Q. This is an email chain. Starts with a David</p> <p>5 Szczepanski email. There's a back and forth that leads up</p> <p>6 to this. But David Szczepanski writes to Alex Choi and</p> <p>7 says:</p> <p>8 Dear Alex, thank you for your prompt response.</p> <p>9 ROAM Data appreciates that this may be a</p> <p>10 misunderstanding at the BBPOS headquarters</p> <p>11 level. Nevertheless ROAM Data urgently requires</p> <p>12 the following assurances from BBPOS."</p> <p>13 The first one is to confirm that BBPOS "will instruct its</p> <p>14 US sales force to cease and desist from interfering with</p> <p>15 ROAM Data's contractual relationship with NAB or any other</p> <p>16 ROAM Data customers." Right?</p> <p>17 A. Yes.</p> <p>18 Q. Did BBPOS do that?</p> <p>19 A. Yes.</p> <p>20 Q. The second is:</p> <p>21 Please confirm that BBPOS will fulfill ROAM</p> <p>22 Data's orders for the MSRs destined for NAB."</p> <p>23 Did BBPOS do that?</p> <p>24 A. Yes.</p> <p>25 Q. And then:</p>	<p>1 any MSR devices to NAB since December 11th, 2015?</p> <p>2 A. MSR only? No.</p> <p>3 Q. I'm going to ask the question again. I'll</p> <p>4 rephrase it slightly. Has BBPOS sold any devices capable</p> <p>5 of MSR to NAB since December 11th, 2015?</p> <p>6 A. Yes.</p> <p>7 MR. TECHENTIN: Exhibit 88 which I'm having</p> <p>8 marked now.</p> <p>9 (Exhibit 88 was marked for identification</p> <p>10 and is attached hereto.)</p> <p>11 BY MR. TECHENTIN:</p> <p>12 Q. It is an email from Bob Cook to Alex Choi and</p> <p>13 Matthew Ng, still part of the same chain. It's a response</p> <p>14 to the email that we just looked at. Bob Cook says:</p> <p>15 "These are fair requests from ROAM." Do you agree with</p> <p>16 that?</p> <p>17 A. This is ROAM to me?</p> <p>18 Q. Do you agree that the three items that were in</p> <p>19 David's email were fair requests that ROAM made of BBPOS?</p> <p>20 A. Yes.</p> <p>21 Q. But then there -- Bob Cook says: "Not aware of</p> <p>22 any NAB agreement we would be interfering with. We did</p> <p>23 not solicit NAB. They came to us." Is that true?</p> <p>24 A. Is what Bob said? Yes.</p> <p>25 Q. The third bullet point is "notify them we are</p>

BEN LO 30B6
ANYWHERE COMMERCE V INGENICODecember 10, 2021
177-180

Page 177	Page 179
<p>1 not --"</p> <p>2 Let's back up so it's clear. Bob says: "Ingenico</p> <p>3 is a competitor and we need to protect our interests." Do</p> <p>4 you see that?</p> <p>5 A. Yes.</p> <p>6 Q. "In a new agreement we should not agree to any</p> <p>7 exclusivity." Right?</p> <p>8 A. Yes.</p> <p>9 Q. And then number 3 of his responses is "notify</p> <p>10 them --" I think he means Ingenico "-- that we are not</p> <p>11 approving assignment of the agreement to Ingenico and</p> <p>12 consider this notification of cancellation." What did he</p> <p>13 mean there?</p> <p>14 MS. BOZEMAN: Objection. Objection to</p> <p>15 identifying "them" as Ingenico.</p> <p>16 A. I think in 2015 Ingenico acquire ROAM, and as we</p> <p>17 are doing business with ROAM that means ROAM become</p> <p>18 Ingenico in 2015 and we are competitor. I think this is</p> <p>19 what Bob Cook try to say that if our agreement, if there</p> <p>20 is transfer of ownership to a company with competitive</p> <p>21 products that we should terminate the exclusivity</p> <p>22 relationship. I think this is what Bob is trying to say.</p> <p>23 BY MR. TECHENTIN:</p> <p>24 Q. But you didn't do that; right?</p> <p>25 A. I don't know. Maybe, did I or did I do -- I</p>	<p>1 A. Yes.</p> <p>2 MR. TECHENTIN: The last document I'll have you</p> <p>3 look at in this context is Exhibit 89.</p> <p>4 (Exhibit 89 was marked for identification</p> <p>5 and is attached hereto.)</p> <p>6 BY MR. TECHENTIN:</p> <p>7 Q. This is from Matthew Ng to Alex Choi and David</p> <p>8 Szczepanski copying a number of people, including you.</p> <p>9 And this is the formal agreement by BBPOS that it would</p> <p>10 cease to interfere with ROAM Data's contractual</p> <p>11 relationship with NAB; right?</p> <p>12 A. Yes.</p> <p>13 Q. And then it says:</p> <p>14 Our legal department has reviewed the May 4th,</p> <p>15 2010 "Engineering Development and License</p> <p>16 Agreement" between ROAM Data and ourselves, (the</p> <p>17 agreement) and noted the acquisition of RD by</p> <p>18 Ingenico has triggered the event of RD to a</p> <p>19 competitor under section 1.2 and the agreement</p> <p>20 was deemed terminated as a result."</p> <p>21 So did Matthew Inc. terminate the contract between</p> <p>22 BBPOS -- between BBPOS and ROAM Data on December 17th,</p> <p>23 2015.</p> <p>24 A. I'm not sure.</p> <p>25 Q. So I understood your testimony earlier today as</p>
Page 178	Page 180
<p>1 don't know. This is his opinion to -- our CEO at that</p> <p>2 period of time.</p> <p>3 Q. We agreed at the beginning of today's deposition</p> <p>4 that nobody's ever terminated the contract between BBPOS</p> <p>5 and ROAM; right?</p> <p>6 A. Yeah. Terminated the contract. And in this</p> <p>7 email Bob said that a new agreement. So maybe he's</p> <p>8 talking about a new agreement with Ingenico.</p> <p>9 Q. Bob doesn't say anything in here about --</p> <p>10 A. He said that. He said "In a new agreement, we</p> <p>11 should not agree to any exclusivity."</p> <p>12 Q. Sorry. I'm moving on with a different question.</p> <p>13 Bob doesn't say anything in this email about what are they</p> <p>14 talking about? We're selling Chipper. That's not part of</p> <p>15 the exclusivity. He doesn't say that, does he?</p> <p>16 A. What's the questions?</p> <p>17 Q. Bob doesn't make any reference to the fact that</p> <p>18 what you were trying to sell NAB was Chipper and therefore</p> <p>19 not part of the exclusivity. Correct?</p> <p>20 A. Yes.</p> <p>21 Q. And, in fact, throughout this entire dialogue</p> <p>22 between Ingenico and BBPOS, and even the interim</p> <p>23 discussions of BBPOS in these emails, nobody is saying</p> <p>24 what you're saying today which is, hey, it's Chipper.</p> <p>25 It's not part of the exclusivities; right?</p>	<p>1 the representative of BBPOS to be clear and unambiguous</p> <p>2 that the 2010 license agreement remained in effect through</p> <p>3 today. Was that incorrect?</p> <p>4 A. Can you repeat your questions?</p> <p>5 MR. TECHENTIN: Do you mind reading that back,</p> <p>6 please.</p> <p>7 (REPORTER READS BACK)</p> <p>8 MS. BOZEMAN: Objection to the characterization.</p> <p>9 You can answer.</p> <p>10 A. No. That we must not terminate.</p> <p>11 BY MR. TECHENTIN:</p> <p>12 Q. The agreement is not terminated?</p> <p>13 A. Correct. The agreement is not terminated.</p> <p>14 Q. Has BBPOS ever sold to ProPay?</p> <p>15 A. ProPay. I don't remember that.</p> <p>16 Q. You don't know one way or the other?</p> <p>17 A. I don't know.</p> <p>18 Q. What about iPayment?</p> <p>19 A. Can you repeat that.</p> <p>20 Q. iPayment.</p> <p>21 A. iPayment? I don't remember that.</p> <p>22 Q. You say you don't remember that.</p> <p>23 A. I don't remember that.</p> <p>24 Q. Do you know who they are?</p> <p>25 A. I don't know who they are.</p>

BEN LO 30B6
ANYWHERE COMMERCE V INGENICODecember 10, 2021
181-184

	Page 181	Page 183
1	Q. You do not know who they are?	1 A. Yes.
2	A. I do not.	2 MS. BOZEMAN: Objection.
3	Q. Are you familiar with Central Payment?	3 BY MR. TECHENTIN:
4	A. No.	4 Q. Has BBPOS indemnified Ingenico for this claim?
5	Q. Merchant Warehouse?	5 A. We requested Ingenico to provide more information
6	A. No.	6 but they didn't want more information.
7	Q. Subway?	7 Q. What information was required?
8	A. Subway? The company selling hot dog? Sandwich?	8 A. Well, because by that period of time Ingenico
9	Q. Sure. Have you sold to them?	9 already have their own products and our CEO request
10	A. No.	10 Ingenico to send more information for our checking like
11	Q. TSYS?	11 which products and what IPE are in French, but Ingenico
12	A. So you're asking whether they're our customer?	12 did not reply.
13	Q. Yes.	13 Q. Have you reached out to the party making a demand
14	A. I'm not sure.	14 to obtain information from them about this?
15	Q. Sage?	15 A. Can you repeat your questions?
16	A. Sage. Not sure.	16 Q. So the demand was made on behalf of REM Holdings
17	Q. NMA?	17 3 LLC. Did you reach out to REM Holdings 3 LLC for the
18	A. NMA?	18 information you needed to evaluate this demand.
19	Q. Yes.	19 A. No. We asked Ingenico to provide what orders and
20	A. A for apple? I'm not sure.	20 what IP was in French and Ingenico never reply. For your
21	Q. NAB we've already talked about. You've sold to	21 information, after 2014, I think most of the products sold
22	them; yes?	22 by ROAM Data are from Ingenico. They only buy the Circle
23	A. Yes.	23 Swipe and PayPal from us.
24	Q. Shopify?	24 And ROAM Data, I believe -- I believe after 2014,
25	A. Yes.	25 some of this order may -- some of this product include the
	Page 182	Page 184
1	Q. What about Evo? E-v-o.	1 IP. But IP maybe steal from us. So we request ROAM Data
2	A. I'm not sure.	2 to provide more information and what product and what IP
3	Q. BlackPod?	3 they're talking about. And ROAM Data or Ingenico just
4	A. BlackPod? I'm not sure.	4 does not reply and does not provide further information.
5	Q. Stella & Dot?	5 MR. TECHENTIN: I'm going to show you Exhibit 91.
6	A. I'm not sure.	6 (Exhibit 91 was marked for identification
7	Q. Silpada?	7 and is attached hereto.)
8	A. I'm not sure.	8 BY MR. TECHENTIN:
9	Q. Cynergy? C-y-n-e-r-g-y.	9 Q. Exhibit 91 is a letter dated February 28th, 2017.
10	A. I'm not sure.	10 So this is the next month. Did you get this letter as
11	Q. MPC?	11 well?
12	A. I'm not sure.	12 A. Yes.
13	Q. Vantiv?	13 Q. This letter writes: "I write to follow up
14	A. I'm not sure.	14 regarding our January 19th, 2017 letter." The one we just
15	MR. TECHENTIN: Let me show you Exhibit 90. This	15 looked at as Exhibit 90; right?
16	is an email from Ingenico to you BBPOS dated January 19th	16 A. Yes.
17	of 2017.	17 Q. And he says:
18	(Exhibit 90 was marked for identification	18 In that letter we notified you of BBPOS's duty
19	and is attached hereto.)	19 to indemnify and hold harmless ROAM Data
20	BY MR. TECHENTIN:	20 pursuant to section 3.18 of their agreement."
21	Q. Subject line is "letter from REM Holdings 3 LLC	21 Right?
22	relating to headphone jack patents." Do you remember	22 A. Yes.
23	receiving this letter?	23 Q. "And pursuant to the representations and
24	A. Yes.	24 warranties made in section 3.9 and section 3.10
25	Q. This is a demand for indemnification; correct?	25 in connection with REM's Holdings 3 LLC's

BEN LO 30B6
ANYWHERE COMMERCE V INGENICODecember 10, 2021
201-204

<p style="text-align: right;">Page 201</p> <p>1 Q. He writes:</p> <p>2 Discussed with Ingenico head of R&D this morning</p> <p>3 about the swipe and chip EMV L2 for solution</p> <p>4 based on Thunder and Ingenico Telium solution."</p> <p>5 Do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. Do you know what "Thunder" means?</p> <p>8 A. I don't know.</p> <p>9 Q. Is that a chip set?</p> <p>10 A. I don't know.</p> <p>11 Q. He asks:</p> <p>12 Could you please arrange Daniel and a firmware</p> <p>13 engineer to travel to France for a two days</p> <p>14 workshop in Valence during this week."</p> <p>15 Did that happen?</p> <p>16 A. Yes.</p> <p>17 Q. You write back and say:</p> <p>18 Hi Chris, let me arrange Daniel and Derek to fly</p> <p>19 to Valence."</p> <p>20 Right?</p> <p>21 A. Yes.</p> <p>22 Q. And the rest of your email is a discussion of</p> <p>23 some of the technicalities of the project that you're</p> <p>24 working on with ROAM; right?</p> <p>25 A. With ROAM, yes.</p>	<p style="text-align: right;">Page 203</p> <p>1 April 26th. To you see that? At the very bottom it says</p> <p>2 "Hi Ben"?</p> <p>3 A. Yes.</p> <p>4 Q. It says:</p> <p>5 I'd like to introduce you to Jerome who is our</p> <p>6 Ingenico mobility line software architect</p> <p>7 manager. He will be in charge for the MBL and</p> <p>8 global architecture definition on Ingenico's</p> <p>9 side."</p> <p>10 Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. So you knew at least as early as April 26th that</p> <p>13 Jerome was an Ingenico engineer; right?</p> <p>14 A. But Christopher is a ROAM -- is introduced to me</p> <p>15 by Will Graylin is ROAM. So I still believe that this</p> <p>16 is -- this is ROAM introduce one of their partner to us</p> <p>17 who is Ingenico. So Christopher here I still think that</p> <p>18 he's from ROAM.</p> <p>19 Q. You think Christopher is from ROAM; yes?</p> <p>20 A. Yes.</p> <p>21 Q. But you know that Jerome is from Ingenico;</p> <p>22 correct?</p> <p>23 A. Yes.</p> <p>24 MR. TECHENTIN: And then Exhibit 99.</p> <p>25 (Exhibit 99 was marked for identification</p>
<p style="text-align: right;">Page 202</p> <p>1 Q. And that would include Ingenico's R&D department</p> <p>2 in Valence; right?</p> <p>3 A. Yes.</p> <p>4 Q. And that, if you look at the Bates number on the</p> <p>5 lower right corner, the Bates number on this is BBPOS</p> <p>6 0000001. Do you see that?</p> <p>7 A. Can you say again?</p> <p>8 Q. Right below Exhibit 97 you see -- do you see the</p> <p>9 exhibit sticker?</p> <p>10 A. Yes.</p> <p>11 Q. Do you see the Bates number underneath that?</p> <p>12 A. Yes.</p> <p>13 Q. This is the very first document that BBPOS</p> <p>14 produced in this case; right?</p> <p>15 A. Yes.</p> <p>16 MR. TECHENTIN: I'm going to show you Exhibit 98.</p> <p>17 This is a document from a little earlier, April 26th of</p> <p>18 2012. And the top email is from Christopher Rotsaert to</p> <p>19 you, copies to Jerome Grandemenge and Jimmy Tang. Subject</p> <p>20 is "meeting ROAM API Ingenico-BBPOS."</p> <p>21 (Exhibit 98 was marked for identification</p> <p>22 and is attached hereto.)</p> <p>23 BY MR. TECHENTIN:</p> <p>24 Q. At the bottom of page 1 of this email again</p> <p>25 there's a quoted email from Christopher Rotsaert to you,</p>	<p style="text-align: right;">Page 204</p> <p>1 and is attached hereto.)</p> <p>2 BY MR. TECHENTIN:</p> <p>3 Q. An email from you to Christopher Rotsaert,</p> <p>4 March 27th, 2012. And can you tell me what this email</p> <p>5 discussion is about?</p> <p>6 A. Talk about a -- maybe talk about a Landi solution</p> <p>7 which is a low-cost solution.</p> <p>8 Q. Landi solution for what?</p> <p>9 A. For EMV level 2. So EMV level 2 is one of the</p> <p>10 EMV standard.</p> <p>11 Q. Why were you discussing a Landi solution for EMV</p> <p>12 level 2 in March of 2012?</p> <p>13 A. I think we come up with a product which is maybe</p> <p>14 expensive, and maybe Christopher said that for Landi can</p> <p>15 come up with an EMV level 2 solution below \$20. And that</p> <p>16 they want us to check whether we can come up with an EMV</p> <p>17 solution at a similar cost.</p> <p>18 Q. We talked earlier today about the fact that the</p> <p>19 hardware that was used by the engineers in France and</p> <p>20 Ingenico, this Telium product, was more robust and more</p> <p>21 expensive than the product that BBPOS was developing;</p> <p>22 right?</p> <p>23 A. Yes.</p> <p>24 Q. And so is the consideration of Landi here a way</p> <p>25 to avoid the high cost associated with the French</p>

BEN LO 30B6
ANYWHERE COMMERCE V INGENICODecember 10, 2021
205-208

<p>1 solution?</p> <p>2 MS. BOZEMAN: Objection.</p> <p>3 A. I don't remember that. Just like -- I don't</p> <p>4 remember that.</p> <p>5 MR. TECHENTIN: Exhibit 100.</p> <p>6 (Exhibit 100 was marked for identification</p> <p>7 and is attached hereto.)</p> <p>8 BY MR. TECHENTIN:</p> <p>9 Q. So Exhibit 100 is an email from Christopher</p> <p>10 Rotsaert to Jimmy Tang. And the subject line is "TR,"</p> <p>11 which I think is the French for forwarding "ROAM</p> <p>12 Data/Google/DUKPT. We talked about DUKPT was the DUKPT</p> <p>13 encryption acronym; correct?</p> <p>14 A. Yes.</p> <p>15 Q. Do you recall what this email exchange was about</p> <p>16 and I note that you're on some of these emails. You're</p> <p>17 not on all of them, but your name does appear starting on</p> <p>18 page 2.</p> <p>19 A. I don't remember. Maybe this is about</p> <p>20 explanation of the DUKPT method. Maybe it explain our</p> <p>21 DUKPT method.</p> <p>22 Q. So you -- on page 2, Jimmy Tang had explained to</p> <p>23 Jerome, and he's the Ingenico engineer in France:</p> <p>24 The DUKPT key management is the exact</p> <p>25 implementation of the ANSI X9.24-1:2009</p>	<p>Page 205</p> <p>1 call we may tell them why we want to do that. So I think</p> <p>2 in this email Ingenico engineer just agree to tweak the</p> <p>3 implementation.</p> <p>4 MR. TECHENTIN: I'd like to switch gears here for</p> <p>5 a little bit and talk about damages in this case. BBPOS</p> <p>6 is seeking damages; yes?</p> <p>7 A. Yes.</p> <p>8 Q. And what form do its -- what are its damages?</p> <p>9 A. For every product with our IP or trade secret, we</p> <p>10 should entitled some of the money of the product.</p> <p>11 Q. And?</p> <p>12 A. And Ingenico used some of our stolen trade</p> <p>13 secrets to come up with a product. So we believe that we</p> <p>14 should be entitled some of the profit from the product</p> <p>15 with IP stolen from us.</p> <p>16 Q. Does that include the RP350x?</p> <p>17 A. Yes.</p> <p>18 Q. Does it include the RP450x?</p> <p>19 A. I leave that to the IP expert to determine that.</p> <p>20 Q. What about the RP457c?</p> <p>21 A. I also leave to the IP expert.</p> <p>22 Q. What about the RP750x?</p> <p>23 A. I also leave to the IP expert.</p> <p>24 Q. RP755x?</p> <p>25 A. I also leave to IP expert.</p>
<p>1 standard. We are using the PIN key variant as</p> <p>2 the key for track data encryption."</p> <p>3 Is that information trade secret?</p> <p>4 A. So you're talking about the Ingenico engineer?</p> <p>5 Q. No. I'm asking: The part that I just read that</p> <p>6 Jimmy tells Jerome, is that trade secret?</p> <p>7 A. Yes. Because we're using the PIN key log in as</p> <p>8 the key for track data. So people don't use that in this</p> <p>9 way. This is a trade secret, and this secret we sent to</p> <p>10 ROAM Data. And also suggested to protected by the 6.3.</p> <p>11 6.3 of the ROAM agreement.</p> <p>12 Q. And then Jerome's response to Jimmy is:</p> <p>13 Thanks Jimmy. On Telium we limit the use of PIN</p> <p>14 key variant to PIN encryption and only allow</p> <p>15 data encryption to use data key variant. So we</p> <p>16 will need to tweak our implementation to support</p> <p>17 format 10 encryption."</p> <p>18 Did you think that that was a trade secret you were</p> <p>19 getting from Ingenico?</p> <p>20 A. I think this is Ingenico engineer after we</p> <p>21 disclose a trade secret to Ingenico, Ingenico engineer</p> <p>22 respond to Jimmy that they need tweak their implementation</p> <p>23 to support use the PIN key for data encryption.</p> <p>24 So Ingenico has to change the way they use to</p> <p>25 implement this output. Because we -- I think in the phone</p>	<p>Page 206</p> <p>1 Q. RP757c?</p> <p>2 A. I also leave that to IP expert.</p> <p>3 Q. ISMP?</p> <p>4 A. I also leave that to IP expert.</p> <p>5 Q. What about the G4X?</p> <p>6 A. G4X is a product we provide. We sold to ROAM</p> <p>7 Data.</p> <p>8 Q. That doesn't incorporate any stolen trade</p> <p>9 secrets, does it?</p> <p>10 A. No. This is the product we made and we sold to</p> <p>11 ROAM Data.</p> <p>12 Q. Is that the same for the G5X?</p> <p>13 A. Yes.</p> <p>14 Q. So you said that you think that as damages BBPOS</p> <p>15 is entitled to some of the money associated with the sales</p> <p>16 of whichever of those Ingenico products your IP expert</p> <p>17 might identify as a problem; right?</p> <p>18 A. Yes.</p> <p>19 Q. Do you -- does BBPOS have a position with respect</p> <p>20 to how much of the money associated with the sales it</p> <p>21 should get as damages?</p> <p>22 A. Well, I don't have the detail. I don't have</p> <p>23 detail yet.</p> <p>24 Q. Okay. Well, tell me what you do know.</p> <p>25 A. What's the question?</p>